United Nations A/HRC/30/50

General Assembly

Distr.: General
17 August 2015

Original: English

Human Rights Council
Thirtieth session
Agenda items 3 and 5
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Human rights bodies and mechanisms

Final report of the Human Rights Council Advisory Committee on the possibilities of using sport and the Olympic ideal to promote human rights for all and to strengthen universal respect for them

GE.15-13898(E)

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I. Mandate on promoting human rights through sport and the Olympic ideal

1. Pursuant to Human Rights Council resolution 24/1, the Advisory Committee prepared a progress report[1] on the possibilities of using sport and the Olympic ideal to promote human rights for all and to strengthen universal respect for them, bearing in mind both the value of relevant principles enshrined in the Olympic Charter and the value of good sporting example, which it submitted to the Human Rights Council at its twenty-seventh session. At the same session, in its resolution 27/8, the Human Rights Council requested the Committee to finalize its study and to present it to the Council before its thirtieth session.

2. The drafting group, established by the Advisory Committee for the preparation of the study, is currently composed of Saeed Mohamed Al Faihani (Chair), Mohamed Bennani, Karla Hananía de Varela, Mikhail Lebedev (Rapporteur), Katharina Pabel and Yishan Zhang.

3. Observations of States and independent experts underpinned the work on the present study to a large extent. In accordance with Council resolution 24/1, the drafting group prepared a questionnaire, which was sent in March 2014 to all Member States, international and regional organizations, national human rights institutions, civil society organizations and other relevant stakeholders. As at August 2015, responses had been received from 25 States,[2] 6 national human rights institutions, 8 non-governmental organizations and civil society representatives, 3 international organizations and 1 special procedure mandate-holder.

4. It is furthermore essential to stress the tremendous contribution, including in terms of awareness-raising, of the scientific community, which continues to provide vibrant critical evaluations, sometimes controversial and disputable, on all features of sport's proliferation in society, including on sport and policy, to identify advantages and shortcomings of sport management and to suggest ways and means of improvement in the interest of promoting human rights and, ultimately, the well-being of all. For many years, Governments have had the tendency to keep academics at arm's length, and academic knowledge in sport was often geared to the sporting community, the identification of talent and the production of medals or industrial complex.[3] The increasing number of impressive academic multidisciplinary sport research appears to be changing this situation. This deserves special attention, but is beyond the scope of the present study.

II. General outline of the study

A. Introduction and objectives

5. The purpose of the present study is to assist stakeholders in assessing modern human rights policy related to sport and to facilitate its further development and improvement in a

[1] A/HRC/27/58.

[2] Argentina, Australia, Azerbaijan, Bahrain, Brazil, Chile, China, Colombia, Côte d'Ivoire, Cuba, Cyprus, Denmark, Ecuador, France, Greece, Guatemala, Mauritania, Myanmar, Peru, Qatar, the Russian Federation, Saudi Arabia, Serbia, Spain and Tunisia.

[3] See J. Maguire, *Reflections on Process Sociology and Sport: Walking the Line* (Abingdon, Routledge, 2013), p. 2.

coherent, comprehensive and systematic manner. Widening the possibilities of using sport and the Olympic ideal to promote and strengthen universal respect for human rights for all requires sustained efforts based on the considerations below.

6. Sport plays a significant role in promoting human rights and represents an expanding portion of humankind engaging in sporting activity. It stands for a strong will to overcome the limitations of human abilities, a desire for self-realization aimed at cultivating our fullest potential and a way of learning communication and harmonization through fair play, among others. It is a multidimensional cultural activity for all and a physical group and leisure activity, which enriches our lives. As with any other human activity, sport is governed by human rights. The core human rights instruments therefore apply to sport like all other fields of human activity.

7. Sport has a broad scope: it includes physical exercise and is a way to improve one's lifestyle, well-being and health. It contributes to creating employment opportunities and promoting peace, development, respect and non-discrimination. Sport therefore contributes not only to achieving economic and social progress, but also to transcending perceived differences and providing opportunities for personal development through its inherent values of respect and tolerance. In the light of these various elements, sport, if used in the right way, can help develop a generation and an environment underpinned by respect and cooperation, thereby strengthening the promotion of and respect for human rights.

8. Sport brings about new opportunities for individuals, communities and for States. It expands global commitments in strengthening physical, mental and emotional health, social welfare and cohesion, promoting camaraderie, physical prowess, team cooperation, solidarity, adherence to standards and rules of the game, with an emphasis on participation, equality, shared humanity, harmony and generosity, and in raising awareness and understanding of human rights. Sport is important in promoting human rights worldwide through the interactions it generates between people from different backgrounds and cultures. Sport and the Olympic ideal can also be a means to advance the cause of peace, promote development and combat all forms of discrimination. Sport unites a large number of people around one issue irrespective of race, gender, religion or background. Discrimination could wither away through sport because, if appropriately used, sport teaches people cooperation, coordination and respect for others, providing people from different cultures with the opportunity to work together in a team spirit. Through its universal nature, sport can instil in people the values of respect, diversity, tolerance and fairness and can serve as a means to combat all forms of discrimination.

9. The values of sport, such as integrity, teamwork, excellence, respect, tolerance, fair play and friendship, create an environment in which young people can learn and grow. Hence, respect for human rights and the values of the Olympic Charter can be pursued collaboratively. Sport and all those involved in sporting events are therefore key to promoting, educating and sensitizing people about the importance of human rights. Moreover, sport should be used as a channel to promote equal opportunities for education, health, gender and ethnic equality, and to protect the rights of persons with disabilities and the environment, among others.

10. The right to play sport has undergone a remarkable conceptual development in recent years and now reflects a desire to lead a healthy way of life with human dignity. This right is rooted in other rights and concepts, including the rights to health, participation in cultural life and development. It must be guaranteed to everyone, including children and young people, older people, women, the rich, the poor and people with disabilities, and protected from any abuses by organizers of sporting events or State interference to sport management.

11. It is important to implement the right to play sport, beyond politics and with full respect for the human rights not only of athletes, but also all those directly or indirectly affected by sporting activities or events, thereby seeking to create a better world for all through sport, physical activity and play.

12. The cohesion and neutrality of the sporting movement are important factors for achieving the Olympic ideal and values. Sporting events should not be used to demonstrate political protests or boycotts as measures of political pressure. In this regard, promoting the ideals of the Olympic Truce in advance of the Olympic Games and the Paralympic Games, and recognizing the importance of constructive partnerships with the International Olympic Committee and the International Paralympic Committee, the International Olympic Truce Centre, hosts of the Games, international sporting federations, the United Nations and State or non-State stakeholders in supporting the implementation of resolutions on the Olympic Truce, becomes promising.

13. The observations below provide an overview, analysis and assessment of the main areas where the continuing integration of a human rights-based approach into the practice of sport and the implementation of the Olympic ideal could potentially be most beneficial or fruitful in terms of promoting and strengthening universal respect for human rights for all.

B. Legal and social framework

14. As highlighted above, sport is an important means to promote and strengthen universal respect for human rights. It can and should be used to combat all forms of discrimination and more generally social exclusion, violence, inequality, racism and xenophobia. There is a need to ensure that sport and sporting activities and initiatives do not lead to such violations of human rights as forced evictions or child or labour exploitation, or violations of economic, social and cultural, or civil and political human rights. Clearly, sport as a form of human activity should be construed and practised under general human rights provisions and specific conventions, with the full gamut of human rights norms and standards, deriving from international human rights treaties and customary law, governing any sport, sporting activity or event, big or small.

15. The Universal Declaration of Human Rights is complemented in this regard by different relevant United Nations basic guiding documents and resolutions, such as General Assembly resolution 58/5, by which the Assembly decided to proclaim 2005 the International Year for Sport and Physical Education, to strengthen sport as a means to promote education, health, development and peace.[4] The General Assembly recognized the potential of sport to contribute to the achievement of the Millennium Development Goals, noting that sport has the potential, as declared in the 2005 World Summit Outcome, to foster peace and development and to contribute to an atmosphere of tolerance and understanding, and reaffirming that sport is a tool for education that can promote cooperation, solidarity, social inclusion and health at the local, national and international levels, as declared in the outcome document of the high-level plenary meeting of the General Assembly on the Millennium Development Goals. Moreover, numerous United Nations resolutions and reports appeal for the advancement of peace, development, diversity, tolerance, fairness, mutual respect, human understanding, dialogue, reconciliation, competition spirit, gender equality and the combating of discrimination, racism, social exclusion and marginalization. Member States have been requested to create

[4] Other relevant General Assembly resolutions include 69/6, 67/17, 59/10, 60/1, 60/9, 61/10, 62/271, 63/135and 65/4.

more opportunities for persons with disabilities, to contribute to the expansion of mass sporting activities, to support high performance in sporting events, to engage more children and young persons, women and girls and older persons in sport and to facilitate access and create a barrier-free environment. Article 30.5 of the Convention on the Rights of Persons with Disabilities specifically addresses measures to be taken by State parties to enable persons with disabilities "to participate on an equal basis with others in recreational, leisure and sporting activities".

16. In his report on sport for development and peace,[5] the Secretary-General reviews the programmes and initiatives implemented by States Members of the United Nations, as well as United Nations funds, programmes and specialized agencies and other partners, using sport as a tool for development and peace.

17. In its International Charter of Physical Education and Sport, the United Nations Educational, Scientific and Cultural Organization (UNESCO) defines access to physical education and sport as a fundamental right for all. UNESCO will be adopting a revised Charter in November 2015, the main amendments of which will include the introduction of the concept of physical activity, notably to reflect the various related health benefits; strong provisions on gender equality and the need to enforce the rights of women and girls; the availability of inclusive, adapted and safe opportunities, especially for children at preschool age, women and girls, the elderly, people with disabilities and indigenous people; the shared responsibility of a large range of stakeholders, including the Olympic and Paralympic movements, for developing and supporting physical education, physical activity and sport policy; the need for activities of these stakeholders to be economically, socially and environmentally sustainable; the important role of sport for development and peace programmes in the realization of development, peace, post-conflict and post-disaster objectives; and the protection and promotion of the integrity of sport against violence, doping, political exploitation, corruption and manipulation.

18. In addition, the Olympic Charter has a pivotal role in the context of human rights and sport in that it provides that "[t]he practice of sport is a human right," and that "[e]very individual must have the possibility to practice sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play",[6] and places sport at the service of the harmonious development of humankind, with a view to promoting a peaceful society concerned with the preservation of human dignity.

19. It is also worth outlining the regional initiatives that have progressively developed the legal basis for promoting human rights through sport and the Olympic ideal. For instance, in the 2013 document entitled "Approach to Human Rights",[7] the Organizing Committee of the Glasgow Commonwealth Games referred to domestic and international law and its relevance to the human rights and sporting context. In the text, the Committee, inter alia, stated that it had "an obligation — both moral and legal, and with the United Nations Guiding Principles on Business and Human Rights in mind — to respect, support and promote these rights through the course of its normal business".

20. Moreover, the United Nations funds, programmes and specialized agencies; sporting organizations, including the International Olympic Committee; and other stakeholders, such as civil society, Governments and sporting, educational and research institutions worldwide, devote increasing resources to areas of development through sport, as a means of helping to promote youth, formal education, culture, healthy lifestyles, sustainability,

[5] A/69/330.

[6] See www.olympic.org/documents/olympic_charter_en.pdf.

[7] Available from www.glasgow2014.com/document/approach-human-rights-december-2013.

gender equality, understanding among peoples and peace. The projects, beyond enabling vulnerable communities to enjoy their right to leisure, support human rights at large. Countless initiatives with this objective and scope have been implemented by relevant stakeholders, including the International Olympic Committee. The Special Adviser to the Secretary-General and the Office on Sport for Development and Peace are spearheading such activities, and the collaboration between the United Nations and the Olympic Movement has further strengthened in recent years.

C. Instrumental significance of education, training and capacity-building in sport

21. Many of the responses received to the questionnaire rightly recognize the fundamental role of sport in educating children and young people, for whom physical activity and sport are used as methods to acquire social skills, positive attitudes and moral values. Sport, besides being a fundamental expression of the right to play, is an excellent tool for psychosocial recovery. It is a right enshrined in the Convention on the Rights of the Child. Educational programmes supporting the practice of sport as a human right need to be given due prominence in curriculum planning. Through such programmes, the spirit of friendship, mutual respect, solidarity and fair play can be promoted, learned and anchored into individuals and their communities. In primary education, sport has a profound effect on children, the development of their skills and the promotion of gender equality. Moreover, the development of values should be cross-cutting in educational programmes and curricula, fostering a balanced mentality that promotes participation over winning, respect for opponents, punctuality and solidarity. These values will ultimately be reflected in the lifestyle of athletes, who will spread them to the rest of society.

22. Sport is more than an isolated activity. It can be seen as an integrative bridge between education, culture, music and dance in order to strengthen human rights and the Olympic values. Physical activity should aim at children becoming acquainted with their culture and more respectful for diversity, tolerance, games rules and behavioural codes.

23. The promotion of peace culture contributes to prevent vandalism and violence during sporting events, particularly in football stadiums, and calls for continuous and active action by all stakeholders. Of particular relevance here is the UNESCO International Charter of Physical Education and Sport, which seeks to combat these human rights violations.

D. Sport and combating all forms of discrimination and racism

24. One of the distinctive tenets of human rights instruments and the Olympic Charter is the opposition to all forms of discrimination. In sport, any type of discrimination is prohibited, such as those on the basis of race, colour, gender, language, religion, political or other opinion, national or social origin, property, disability, birth or other status, or against national minorities. Human rights and the Olympic ideal envisage a society without any discrimination. The Olympic Charter seeks to develop sincere understanding, cooperation and friendship among people and to set a unique and shining example: gaining laurels through fair competition on an equal footing.

25. The best way to combat all forms of discrimination is through education, especially for the younger generation. Education can enhance the respect for human rights and the Olympic principles of friendship, respect and excellence. While the respect of the Olympic values could make it possible to overcome all forms of discrimination in the sporting context, an international academic debate continues on the real benefits of promoting these

values. Critical scholars argue that "athletes who are co-opted by the 'educational outreach' branch of the Olympic industry as role models, risk entrenching sexism, racism, and other discriminatory systems that they may be hoping to challenge".[8]

26. Sport can combat social barriers, promote communication about gender and other forms of discrimination and contribute to bringing men and women closer together to enhance social cohesion.

27. It is noteworthy that, in certain instances, the adoption of protocols within sport has contributed to promoting respect and thus combating discrimination, for instance, handshakes between players. In addition, banners in athletic fields and international athletic conferences on anti-discrimination, together with laws prohibiting and providing penalties for such acts, contribute to raising awareness of and combating all forms of discrimination.

E. Role of different types of sporting events

28. For the purpose of the present study, it is important to identify synergies and complementarities between sport and human rights that would pinpoint the relations between them, so as to promote the values of diversity, tolerance and fairness and to combat all forms of discrimination. It is also important to identify the obstacles to promoting human rights, including any infringements, which may occur in the context of sporting events.

29. Sporting events can help promote awareness and understanding of human rights principles through the interactions between people of different backgrounds and cultures. To strengthen this aspect, local, national and regional sporting events could include special targeted competitions for ethnic sport strands designed to demonstrate different ethnic traditions, practices and customs.

30. Sport and mega sporting events, including the Olympics, bring people closer together and make them familiar with each other. The shared purpose emerging from sport would eventually lead to decreasing prejudice and, given the high number of participants, this spirit would spread further towards the creation of an environment conducive to the promotion of human rights.

31. The following categories of sporting events can be distinguished: local, national, regional, continental, international and global, as well as special targeted programmes. The categorization is functional and depends on the commitments and objectives of the organizers, who decide upon the concrete requirements for each category. Hence, it is important that stakeholders, and in particular organizers of mass sporting events, use and leverage such events to promote and support sport for development and peace initiatives,[9] including to support the inclusion of persons with disabilities and to promote non-discrimination.

32. The staging of multiple-sport events in different regions of a country also results in the regions benefitting from the construction of related infrastructure, such as sporting venues, hotels and access roads, the development of know-how, expertise and the tourism industry and an overall positive impact on the economy. However, alongside these opportunities for economic and social development, sporting events also carry risks, including of the local population being displaced, evicted, exploited or killed.

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[8] See Helen Jefferson Lenskyj, *Olympic industry resistance: challenging Olympic power and propaganda* (State University of New York, Albany, 2008), p. 77.

[9] See General Assembly resolution 67/17.

33. Global or mega sporting events like the Olympic Games or the Fédération Internationale de Football Association (FIFA) World Cup receive special national and international attention owing to their role in advancing human rights and well-known wider economic, social and cultural agenda. The global dimension and increasing ratings of major competitions can contribute to the perception that modern sport is a universal facilitator of general humanitarian ideas and approaches addressed to all mankind. From a human rights perspective, recent controversies about the balance between related opportunities and risks have renewed fundamental questions about the social opportunity costs of hosting mega sporting events and the responsibilities of host Governments, and international sporting governing bodies, which set the terms for staging these kinds of events.[10] Sporting events can raise human rights questions, and human rights instruments and practices should be observed in their organization as for all human activity. A scholar discourse continues on failures to strike a fair balance between celebrating humanity and market manipulation.[11]

34. Major sporting events can be used as a catalyst to implement child protective strategies and strengthen cooperation among various stakeholders to mitigate potential harm. There is a need to involve and build partnerships with key stakeholders, such as the International Olympic Committee, the International Paralympic Committee, international sporting federations, host countries and businesses. Organizers of such events should include an impact assessment of human rights, including children's rights, in the bidding criteria. For instance, the "Children Win" project of the non-governmental organizations ECPAT and Terre des Hommes calls for a revision of the bidding processes of major sporting events, to include at all stages of the assessment the risk mitigation measures and positive effects. Compliance with human rights principles and standards should become a basic criterion for countries and cities to be eligible as hosts of major sporting events. In this regard, the elaboration of a framework on "sporting and human rights" similar to that on "business and human rights" may prove to be effective in defining the scope of the human rights responsibilities of all actors involved in sporting events and in exploring ways for them to be accountable for the impact of their activities on human rights.

F. Business, public-private partnerships on human rights and sport

35. Sport makes it possible to create synergies between public and private sectors in a concrete and effective manner, even in vulnerable areas, and can engage international corporations and foreign suppliers or industries by making them aware of their social and local responsibility. Labour, employment, health and safety in the management of sporting activities require compliance with employment standards as expressed in the International Labour Organization (ILO) fundamental conventions along with, where appropriate, other local initiatives. ILO conventions set out a "social floor" in the world of employment and provide for the elimination of all forms of compulsory or forced labour and the effective abolition of child labour. Accountability and transparency and complaint mechanisms provide the necessary guarantees against human rights abuses of licensees, including child labour, excessive working hours and abuses of health and safety laws in the supply chains.[10] Some researchers have also called for social responsibility to become a pillar of

[10] See Institute for Human Rights and Business, "Striving for Excellence: Mega-Sporting Events and Human Rights" (London, October 2013). Available from www.ihrb.org/pdf/2013-10-21_IHRB_Mega-Sporting-Events-Paper_Web.pdf.

[11] See J. Maguire et al, "Olympic Legacies in the OIC's 'Celebrate Humanity' campaign: Ancient or Modern?"; and J.A. Mangan, "Prologue: Guarantees of Global Goodwill: Post-Olympic Legacies — Too Many Limping White Elephants?", *International Journal of the History of Sport*, Vol. 25, No. 14 (December 2008).

the Olympic Movement, arguing that, if future Olympic Games and the Olympic Movement in general were to claim an authentic legacy, this must be demonstrated by accessible housing, tenants' rights, freedom of assembly, a free media, unrestricted public use of public spaces and the protection of children and young people from Olympic propaganda.[12]

36. The Guiding Principles on Business and Human Rights can contribute to the promotion of human rights during the management of sporting events but they cannot ensure that there will be no negative human rights impact. However, if implemented from the outset of the life cycle of mega sporting events, the Guiding Principles can reaffirm States' duties to protect individuals from rights abuses involving non-State actors. The Guiding Principles also offer a process to mitigate and effectively manage business-related human rights risks. Strong not-for-profit partnerships and sponsorships could gather funds to support sporting activities in schools and universities. As highlighted above, a framework for sporting and human rights, drawing from the business and human rights framework and governing the activities of all key actors in the organization of sporting events, from the bidding stage to the actual event, may be necessary in order to better reflect the specificity of sport and to limit the negative impact of such events on human rights.

G. Incorporating sport to conflict-prevention activities and peacebuilding

37. Sport has the potential to contribute to overcoming humanitarian crises and conflicts and to achieving the Millennium Development Goals. One of the greatest challenges for a country in internal conflict is to engage in dialogue or sign a peace agreement with parties to the conflict. Because sport promotes rapprochement, it can help to reduce the levels of violence. Sport does not need a language. It transcends nationalities, religions and ideas. Sport should be conceived as a tool to foster dialogue, respect and collaboration. It has often been the only way to establish dialogue between divided communities. Recreational programmes, sport and games have heled to bring about a tacit truce in some regions where there is armed conflict. For instance, in Colombia, several programmes have been launched to assist victims, including children and young people involved in the conflict. Coexistence and peace programmes complete this work by means of recreational training and sport training in order to strengthen relations of coexistence among children and youth and to prevent and mitigate the effects of violence.

38. Sport can promote peace through the competition of athletes from countries in conflict. The fact that citizens of countries at war or in conflict can meet in an environment of peace and tranquillity is very positive and helps break taboos, which have been the source of many conflicts. Sport plays a relevant role in peace processes. The media also can play an essential role towards achieving the common goal of peace. In Guatemala, for instance, sport is used as a tool for social change. Specific programmes bring together people in high-risk areas or conflict zones for the purpose of performing diverse sporting activities without violent confrontation, thus contributing to acceptance and tolerance and promoting social cohesion.

39. In post-conflict societies, the use of sport and human rights and the values of the Olympic Charter can offer an alternative life model and an outlet for the energy of youth, life training through rules, respect for one's opponent and tolerance of difference. In non-post-conflict societies, the first step is to tolerate the specific characteristics of others.

[12] See Helen Jefferson Lenskyj, *Olympic industry resistance: challenging Olympic power and propaganda* (State University of New York, Albany, 2008), pp. 149-152.

respect their human rights and defend them when needed. The next step is to enhance cross-cultural exchange and teach the young generation to eliminate such causes of conflict as sex discrimination and marginalization of social groups for cultural reasons. Sport can help educate people, especially young people, about these values. Sport also helps eradicate extreme poverty and hunger, promotes gender equality, reduces child mortality, improves maternal health and contributes to developing a global partnership for development.

40. Sport plays an important role in promoting international relations among peoples and opens up the field of common activity and competition between amateur and professional athletes. Moreover, athletes are considered as ambassadors of peace, cooperation and friendship between the peoples through their participation at the local and international levels.

41. Sport can also advance the cause of peace by bridging social, economic and cultural divides and building a sense of shared identity. It is important for States to cooperate with the International Olympic Committee and the International Paralympic Committee and other sporting organizations, to use sport as a tool to promote peace, dialogue and reconciliation in areas of conflict during and beyond the period of the Olympic and Paralympic Games.[13]

H. Media, sport and human rights

42. The media is a critical stakeholder and plays a very important role in the promotion and popularization of sport. It is the media that has made possible the globalization of sport. Spreading knowledge about physical fitness, broadcasting sporting events and reporting on public figures in sport encourages viewers to appreciate high-level matches and sportsmanship. At the same time, it also acts as an amplifier for actions and sporting policies, both positive and negative, and has therefore become a powerful tool both for and against the promotion of human rights through sport. Because it has the power to shape public opinion, it can illustrate how sport can translate into respect for human rights and promote social cohesion and acceptance of diversity. The media uses mass communication tools during commentaries of football and other sporting events and can therefore easily disseminate human rights promotion messages during such events.

43. Moreover, the media aims to encourage Governments to ensure more transparency and accountability in the sporting system. It also exposes human rights violations, provides an arena for different voices to be heard, offers a significant opportunity for the promotion of peace through sport, in particular the Olympics and other mega sporting events, and plays a vital role in the creation of a friendlier society and more peaceful world. The media therefore has an important role in demonstrating the clear benefits of sport, not only in the area of health, but also in promoting social cohesion. Disseminating knowledge of sport and the Olympic Games helps enhance cooperation, the understanding of friendship and enterprising spirit. It is important to work towards improving friendship and communication between athletes and trainers from different countries or regions. Thus the media, as an influential actor, can promote and help spread social responsibility through sport and also stimulate massive social mobilization as regards its practice. It is argued that sporting events should therefore be covered by more television channels and national newspapers, highlighting the requirements for a culture of peace, such as fair play, cooperation and respect for the opponent.

[13] See General Assembly resolution 66/5.

44. The media can shed light on human rights violations and has an important role in fairly covering all violations of the rights of athletes or the local population affected by sporting events. Its broadcast programmes also educate people. Campaigns to promote human rights, sometimes with the assistance of star athletes, are intended to raise awareness of society at large. The media can also contribute to the promotion of human rights by encouraging greater inclusion of disadvantaged groups. A powerful instrument of awareness-raising is when personalities publicly condemn cases of racial discrimination or intolerance. The collaboration with non-governmental organizations is also important to raise awareness about the positive and negative impact of sporting events. The "Don't Look Away" campaign and the "Children Win" project, of the organizations ECPAT and Terre des Hommes, which highlight the positive and negative effects that major sporting events have on children, are a good example of such collaboration with traditional and digital media.

45. Broad media coverage has made sport attractive to business, thereby turning it into a huge industry and contributing to launch new mass sport trends. The modern media promotes outstanding athletes, provides funding and fulfils humanitarian, educational and other support objectives.

46. The media can therefore play a key role in upholding human rights and, for this purpose, an independent media and freedom of expression are essential. Access to information that is objective and balanced can only be guaranteed through a free and competitive media. When censored, the media becomes a tool for propaganda, which goes against the very idea of promotion of human rights in sport. Misleading and wrong information can trigger violence among athletes and fans and lead to infringement of the rights of sporting adversaries and/or local populations.

47. Racist comments and slander during sporting games, the Olympics and other mega sporting events, and their wide dissemination through the media, may contribute to the erosion of the rights of others during sporting events. To avoid such negative outbursts, it is not enough to provide for legal remedies, which may be long-winded, but it is also important to adopt and implement rigorous and effective disciplinary measures to preserve the rights of athletes and promote human rights in sport.

I. Sport and development

48. Sport can promote sustainable development if there is awareness about the potential negative economic and environmental impact of international sporting events and effective measures to address them. Sporting events such as the Olympics may generate indirect economic benefits and boost economic development in the host country. Development in a country is promoted in a variety of ways. For example, the building of urban and rural public sporting and exercise facilities in different regions contributes to economic dynamism. The United Nations has incorporated sport as a tool for development and peace in its work, notably through the Office on Sport for Development and Peace.

49. Sport also has unique attributes through which it can contribute to development processes. Its capacity as a communication platform, its ability to connect people, its popularity and its convening power make it a development tool that can be used to meet high standards. It is noteworthy that the International Olympic Committee adopted the Olympic Movement's Agenda 21 for the twenty-first century, as a result of which the London and Sochi Olympic Games were managed on a sustainable development basis.

50. Furthermore, sport is a catalyst for economic development whereby all elements of the sporting economy are interconnected and simultaneously contribute to and benefit from its development, at the local level in particular, as a result of economies of scale. Sporting

events may create employment opportunities, thereby increasing the revenue base of a country. Tax revenues thus generated can be used for infrastructure projects such as construction of roads, bridges, hospitals or water pumps. Sport can also be a mechanism through which youth talent can be exploited to generate income for the individual and the community. Additionally, by engaging young people, it may contribute to keeping them from idleness and vagrancy. Development programmes that use sport can facilitate the transfer of skills acquired in the field, in particular life skills and employability skills. Moreover, promoting policies to train teachers and coaches, to ensure good sporting facilities and to make them freely accessible, are fundamental factors for development. It is therefore important that, in the context of the post-2015 development agenda and the sustainable development goals to be announced later this year by the General Assembly, sport be recognized as a catalyst to development and be used as a tool to reach the objectives set in the global development agenda.

51. One of the most important factors in promoting the development of a country is to bring about social change. Sporting events and the practice of various disciplines carry educational messages, which contribute to raising awareness on social issues, such as HIV/AIDS or racial and gender discrimination, by attracting people who are more difficult to target through institutional means and thus making it possible to reach a wider and more diverse audience.

52. The ability of sport to promote self-belief alongside collective optimism makes it an ideal social development tool. Sport is based on respect for rules and an equal respect for and acceptance of those who make and apply them. The Olympic focus on the harmonious development of humankind is echoed at every level, from children's street games to the highest levels of performance sport.

53. Projects aimed at improving life skills and teaching values that foster constructive behaviours and respect for human rights are of crucial importance. One example is the International Olympic Committee "Sport for Hope" programme, which consists in setting up Olympic youth development centres in developing countries, in particular Haiti and Zambia. It aims to provide young people and communities with positive sporting and lifestyle opportunities, offers modern and professional training facilities to athletes of the entire region and seeks to spread the Olympic values of excellence, friendship and respect. Such development projects, delivered jointly with appropriate specialized partners, adapted sporting activities and sport at large, can be effective tools for the socioeconomic development of communities.

J. Best practices, national experiences and models to follow

54. Sport is increasingly being recognized as a vehicle for inclusion and cohesion. Its benefits, in terms of equality and social integration and of building self-esteem and resilience, and its power to unite more than divide, are gaining ever more political and apolitical credibility. Its contributions to the physical and mental well-being of individuals, communities and the nation are manifold and not to be ignored or undervalued, as has happened in the past.

55. The UNESCO Quality Physical Education guidelines, developed with the support of several other United Nations agencies and the International Olympic Committee, promote physical education as the only curriculum subject that combines physical competence with values-based learning. Drawing on good practices and benchmarks in crucial areas, such as inclusive provision and teacher training, the roll-out of the guidelines assists Governments from all regions in revising their physical education policy.

56. One example of the promotion of social inclusion and the concept of fair play and respect for opponents, especially among children and adolescents, is the "get ahead" programme in Colombia, which contributes to having a complete education and improving the quality of life of children and young people of ages 7-17 years, both in and out of school. The programme is supported by an incentives package for students and athletes, teachers and coaches, as well as educational institutions, municipalities and departments.

57. Greece seeks to use sport as a tool to instil the Olympic values in the young generation, to help them gradually build a culture of peace. It also supports the development of innovative educational programmes that help to reach the young generation and educate them on how to uphold the Olympic ideal and respect for human rights in their everyday lives. The "imagine peace" educational programme, implemented from 2011 to 2013, aimed at teaching children basic Olympic values. In 2014, the "respecting diversity" educational programme aimed at educating students, through the history and ideals of the Olympic Truce, on how to respect diversity and to address such issues, with Olympians sharing their experience of participating in the Olympic Games. The International Olympic Truce Centre organized an "imagine peace" youth camp in Olympia, Greece, in which participants from all over the world were brought together for a week-long camp to learn the principles and ideals of Olympism. Finally, Greece has endorsed a joint project between UNICEF and the Truce Centre that promotes the values of peace, tolerance and solidarity.

58. In Guatemala, the "90-0" programme — meaning 90 minutes with zero violence — focuses on promoting peace culture and aims at preventing vandalism and violence during football matches. Another programme, the "Friday 24-0" — meaning 24 hours with zero violent deaths — covering 3,791 educational centres aims to coordinate sport and arts projects with a view conducive to an environment of peaceful coexistence within a human rights framework. Guatemala also uses sport as a tool for social mobilization in support for a variety of causes, for example, cancer, autism, peace and non-violence, HIV/AIDS and to help persons with disabilities. Through these programmes, sport also plays a role as an alternative to harmful or high-risk activities.

59. In Brazil, "caravan sport" is a social action initiative in which athletes train children in 10 poor municipalities; and "segundo tempo" is a programme that provides primary and secondary school children with a safe environment after school hours for learning activities that seek to link sport and recreation with hygiene, life skills training and HIV prevention.

60. In China, the 1995 National Health Plan integrated sport and sporting events with national development and national education policies. The Plan lists goals and targets, such as building 1,200,000 nationwide sport fields — thereby increasing to 1.5 square metres the area of sport fields per capita — and stipulates that all children should engage in physical exercise for at least one hour daily while at school. China has 250 million students at school, with the benefits of the plan being self-evident. It contains policies for women, children and young people, the elderly, persons with disabilities and national minorities. The plan also calls for strengthening research into and development of sport for persons with disabilities, and the organization of cultural, physical and recreational activities specifically for children, with free access to public sporting facilities.

61. The Russian Federation promotes the establishment and development of national and international systems of Olympic education, and puts forward its model as a best practice to follow, with 20 years of successful partnership between government and non-government stakeholders.

62. France has a policy of prevention and combating behaviour that fails to respect human rights and sporting values. The policy aims to promote athletes' awareness of the values of the Olympic ideal, to prevent behaviour that would violate human rights. It also

aims to promote sport as a privileged space with shared values, such as respect for tolerance, solidarity and fair play, by putting in place three interministerial programmes:

(a) The National Programme 2012-2014 against racism and anti-Semitism, organized by an interministerial committee;

(b) The Government Programme 2014-2016 against sexual violence and discrimination;

(c) The Fourth Interministerial Programme for combating violence against women.

63. As the media plays a very important role in communicating human rights and the Olympic ideal, significant awareness-raising initiatives with regard to the inclusion of women began in France with a programme under the National Council of Sport. The Ministry of Sport provides grants to increase broadcasting time for less popular sports with a view to encouraging the universalization of sport. To enhance respect for human rights, France aims for every federation to draft a statute giving effect to the principles of the charter of ethics and conduct of the National Olympic Committee.

64. In Cyprus, special sporting programmes are aimed at strengthening the relationship between the Greek Cypriot and Turkish Cypriot communities and at facilitating communication.

65. Long-term awareness-raising campaigns are important to involve organizers of major sporting events in a sustainable way before, during and after major sporting events. The non-governmental organizations ECPAT, Terre des Hommes and the Oak Foundation have conducted initiatives and media campaigns to combat the sexual exploitation of children in major sporting events. The "don't look away" campaign, led by ECPAT, provides for awareness-raising activities in countries hosting major sporting events, such as the 2014 FIFA World Cup in Brazil. More importantly, the campaign also addresses the demand side. Both the European Union and the Government of Brazil engaged in the campaign, thus acknowledging the serious challenges that major sporting events represent in relation to the sexual exploitation of children.

66. Furthermore, countries that have recently hosted major sporting events, such as Brazil, Poland and South Africa, have deployed efforts to minimize the risks faced by children of falling victim to sexual exploitation. Those efforts include the adoption of specific legislation, monitoring tourist and sporting zones, launching awareness-raising campaigns, creation of nationwide hotline services and the development of smartphone applications, regional cooperation and the implementation of training programmes for law enforcement agencies.

67. "Unite for children, unite for peace" was the motto of the partnership between UNICEF and the FIFA World Cup in Germany in 2006, aimed at promoting the right to play and development of children worldwide. "Football for life" is another programme by UNICEF in Honduras that uses football to educate children on HIV/AIDS.

68. The Youth Leadership Programme, initiated by the Special Adviser to the Secretary-General and conducted by the Office on Sport for Development and Peace, is another example of a project in support of youth role models.

K. Challenges: exploring the complexities of using sport to promote human rights, preventing human rights abuses and detrimental practices related to sport

69. As with any social activity, sport may have negative side effects.[14] The challenges faced are generally the same worldwide, with some differences owing to culture. Among the main challenges are raising awareness among sporting actors that they are a vector for the promotion of sporting values and ensuring that stakeholders make every effort to prevent politicization of sport in any form. One of the key questions is how to create a culture where people respect human rights and endorse the Olympic ideals.

70. Cultural, political or armed conflicts and a low level of economic development also present significant challenges. In many countries, owing to the low level of economic development or a sudden increase in demand for sporting activities, access to well-equipped sporting facilities is not available to everyone. Uneven development and social conflicts are also among the constraints for people's participation in sport. In addition, a special focus should be placed on religious and cultural issues. In some countries, for instance, women are prohibited from practicing sport or still face difficulties in accessing competitions. Insufficient policies to promote the participation of women in sport and a lack of infrastructure in developing countries thus remain central challenge in the universalization of sport as a means to promote human rights.

71. Numerous incidents have demonstrated the challenges faced in promoting human rights through sport and the Olympic ideal. These include the sporting boycott of South Africa during the apartheid era; attitudes towards the athlete Jesse Owens at the Berlin Olympics in 1936; and the Munich massacre in 1972, in which members of the Israeli Olympic team were taken hostage and killed by the Palestinian Black September group. Strategies should therefore be devised to effectively translate into reality the symbolic role sport plays in the promotion of human rights.

72. There are also challenges related to the fight against corruption, the elimination of discrimination at all levels and unfair rules and regulations. The root causes of these challenges are, inter alia, lack of awareness and a low level of social education; political or financial instability; extreme national defence strategies that may be a cause of discrimination; and customs and traditions that can impede the participation of specific groups, such as women, older persons, minorities or ethnic groups.

73. Many good education materials on sport and Olympic values have been produced in recent years. They do not however sufficiently reach their target audiences, especially in formal education systems. Through the Education Partnership, the International Council of Sport Science and Physical Education, the International Fair Play Committee, the International Olympic Committee, the International Paralympic Committee, UNESCO and the World Anti-Doping Agency have joined forces to teach values through sport, using culture- and age-specific materials to give practical support school teachers.

74. Sport has also been connected to the trafficking of children, particularly from developing and the least developed countries; young people who leave school early; doping; and identity fraud in selections of some young people who have already passed the age of eligibility.

75. Another major issue is the area of unregulated betting. The global volume of unregulated sport betting is estimated at hundreds of billions of dollars per year. Combined

[14] Summary of the high-level interactive panel discussion of the Human Rights Council, A/HRC/20/11, para. 10.

with corruption and coercion of athletes and sporting officials, it offers major business opportunities for organized crime and money launderers. The manipulation of sport competitions (match-fixing), with the involvement of transnational organized crime, is a major threat to the integrity of sport. The protection of the integrity of sport against this and other threats is a prerequisite for preserving the credibility of sport and its educational values. This challenge can only be addressed effectively through close cooperation between public authorities and sporting organizations at the national and international levels.

76. The media has a considerable influence on society. It tends to emphasize the participation of men in sport, thereby ignoring the equal right of women to sport and recreational physical activity. In addition, the promulgation and promotion of sport and physical activities with a gender-equity approach amounts to little if the different needs of men and women are not actually addressed. It is crucial for sport in any country to acquire a socially targeted dimension to make it accessible to everyone. It is here that the contribution of the media can be most helpful, by broadcasting sport-related programmes and events aimed at a broad and diverse population made up of all rights-holders.

77. Furthermore, the following problems relating to gender discrimination in sport are to be understood in an international context:

(a) The difference in the distribution of sport sponsorship by gender. It is estimated that, with regard to participants at the Olympics, only 0.5 per cent of all commercial sponsorships is focused on female athletes;

(b) Media coverage for women's sport is estimated at only 5 per cent. Teenage athletes therefore lack sufficient female role models for fair sporting behaviour;

(c) The gender wage gap in sport;

(d) The underrepresentation of women in leadership and management positions in sporting organizations.

78. Other challenges include the lack of funds required for the promotion of sporting activities, especially for vulnerable groups and persons with disabilities; the difficulties associated with building sporting infrastructure, especially for the expensive activities that cannot be practised by all; and doping. Generally, the provision of sporting facilities remains an acute problem, although several inter-institutional alliances have been set up to allow a wider population to gain access to the sporting facilities of educational centres. The allocation of adequate resources for sport is also an issue. For instance, in some countries, like Guatemala, priority has been given to those areas where violent episodes are more frequent ("red zones").

79. A very dangerous trend has been the appearance at sporting activities of racist and extremist ideas within society arising as a result of economic or other critical domestic challenges. Other obstacles refer to threats of sexual harassment and abuse in sport and the poor representation of women in decision-making positions. There are also other obstacles that might impede sport from promoting human rights, such as extreme nationalist sentiment, which might impinge on others' rights and generate violence between athletes and fans, thereby increasing hatred among all parties and eroding the rights of many. It is therefore all the more important in such contexts to encourage the culture of friendship and tolerance, a culture that could flourish if people did not have prejudices about each other.

80. In recent decades, it has been shown that, far from being a competitive activity, sport is a multidimensional tool that substantially promotes quality of life and can indirectly serve to bring nations together. Computerization, however, has become a prominent part of the life of children and youth, thereby representing a non-negligible factor in drawing them away from sport and other physical activities and possibly endangering their health and physical development.

81. At the international level, the main challenges in the promotion of human rights through sport and the Olympic ideal include the inclusion of professional athletes in the Olympic games, the trading of athletes, the rapid introduction of technology in developing countries (and the consequent increase of the cost of sporting activities) and the obligation to recruit and pay sponsors in order to take part in high-level sporting events. This list is not exhaustive, but it is evident that such practices have deeply affected the field of international sport, especially in developing countries.

82. International athletes are often considered as commodities, for instance, in the World Cup, where sometimes games have allegedly been rigged. The rights of athletes are sometimes at stake owing to the exploitation they face. In many regions in the world, athletes are treated like goods when they are being transferred from one club to another. Although the word "sell" does not appear in the deals, the conditions may amount to treating players like goods. Moreover, the deals struck with clubs are mostly arranged by third parties, who work as middlemen. In certain instances, while the negotiations for deals are in progress, the athletes may become the victims of human traffickers.

83. Another concern relates to the lack of a human rights code of conduct. For instance, in Asia, the largest and most important Asian sporting confederation is the Asian Football Confederation, which was established in 1954 in the Philippines and whose headquarters are currently located in Malaysia. It is one of the six confederations that make up FIFA. There has been no report of any serious human rights violations or abuses by the Confederation in the past; however there have been a few allegations, which cannot be substantiated. With the advancement of human rights issues in sport, a human rights code of conduct for all affiliated members of the Confederation gains importance as a preventive measure for any future human rights violation. For instance, a code of conduct encompassing all federations under FIFA could be developed, enabling a culture of human rights to flourish within the members of the Confederation, which would strengthen respect for human rights in sport in general.

84. A lot of focus has been placed on competitive sport. However, the importance of promoting non-competitive sports, or sports that do not produce opponents, those with a collective and supportive nature, or those that do not have a winner and a loser, should also not be disregarded.

85. Outdated coaching methods, which are hierarchical and confrontational, though this cannot be generalized, also raise some concern. Structures such as the Winning Scotland Foundation provide a new and inclusive approach to coaching techniques.

86. The behaviour of parents and caretakers on the touchline, lack of equal access to sporting facilities and training times are also issues that need to be addressed, since these are often factors that exclude young people from playing and participating.

87. Major sporting events, such as the Olympic Games, can put children at a greater risk of becoming victims of sexual exploitation, with the arrival of thousands of additional tourists in a festive environment, thus increasing the number of potential abusers. Countries that have recently hosted major sporting events, such as Brazil, Poland and South Africa, deployed efforts to minimize the risks of children becoming victims of sexual exploitation. It is important to take stock of these recent efforts, good practices and lessons learned, in order to minimize risks for vulnerable children. Through comprehensive and sustainable child protection strategies, ethical and responsible sporting events can be developed.

III. Recommendations

A. National legislation and executive practice

88. **The Human Rights Council Advisory Committee encourages States to:**

(a) **Strengthen existing legislation on the promotion and development of sport and through sport;**

(b) **Adopt specific legislation on the prohibition of discrimination on all grounds, including race, colour, sex, gender, sexual orientation, language, origin or religion; doping; sexual exploitation; sexual harassment; and abuse in sport;**

(c) **Continue and increase efforts at all levels to combat sexual exploitation, including of children, at major sporting events, and prevent any human rights violations related to sport;**

(d) **Provide access to sport at the national level, regardless of gender, race, colour, sex, sexual orientation, language, origin, religion or social status;**

(e) **Guarantee constant safeguards against extreme nationalist sentiment; violence in sport; unlawful influence on decision-making during competitions and other sporting events; and the discrediting of or undermining confidence in the apolitical and autonomous nature of sport and sporting federations.**

B. Programme support

89. **The Advisory Committee invites States and national and international organizations, including sporting organizations, to:**

(a) Use coherent, sustainable and integrated sporting strategies and programmes to advance human rights, peace, development, diversity, tolerance, fairness, mutual respect, human understanding, dialogue, reconciliation, the spirit of competition and gender equality, and to combat discrimination, racism, social exclusion and marginalization;

(b) Develop sporting and leisure programmes, highlighting the importance of ethical and moral values and raising awareness and understanding of human rights and the Olympic ideal as a means to advance the cause of peace, promote development and combat all forms of discrimination;

(c) Reflect on the design of models for cooperation with the International Olympic Committee and the International Paralympic Committee and other relevant stakeholders to use sport as a tool to promote peace, dialogue and reconciliation in areas of conflict or disturbance, in particular, during and beyond the period of the Olympic and Paralympic Games, in particular by observing the Olympic Truce;

(d) Consider elaborating a framework for "sport and human rights", covering, inter alia, mega sporting events, by drawing on the experience of the business and human rights framework;

(e) Develop special programmes to provide more opportunities for persons with disabilities to contribute to the expansion of mass sporting activities, at the grass-roots level, to encourage high performance in sporting events, to engage more persons, including children and young persons, women and girls and elderly persons, in sport and to facilitate access and a barrier-free environment with accessibility for all;

(f) Contribute to the inclusion of persons with disabilities by showcasing their abilities and strengthening their role and rights in society;

(g) Include meaningful provisions in current sporting programmes providing for the use of existing and the creation of new alliances between civil

society, private enterprises, international organizations and national institutions for the promotion of human rights through sport and recreational physical activities;

(h) Increase the presence of women in decision-making positions in sporting bodies, thereby countering their underrepresentation in leadership and management positions in those organizations;

(i) Empower women and girls in particular by showcasing their abilities;

(j) Substantially increase female participation in all areas of sport, including high-performance sport;

(k) Publicize and promote sporting and physical activities with a gender-equity approach, taking fully into account the different needs of men and women;

(l) Promulgate new types of collective and inclusive sport;

(m) Monitor tourist and sporting zones and draw up and implement codes for fans who watch and/or comment on matches;

(n) Launch awareness-raising campaigns to promote the values of sport, human rights and the Olympic Movement;

(o) Implement training programmes for different stakeholders in the sporting field to sensitize them to the promotion and protection of human rights in sporting events;

(p) Develop coherent and integrated policies to prevent and combat child trafficking in the least developed countries, vandalism and violence during sporting events, and behaviour disrespectful of human rights, which do not take into account the right of women to take part in sport and recreational physical activity;

(q) Involve and build partnerships with key stakeholders, such as international sporting organizations, including the International Olympic Committee and the International Paralympic Committee, and host countries, in order to implement child protection strategies and to strengthen cooperation among various stakeholders to mitigate harm;

(r) Help children and young people to recover from trauma;

(s) Mitigate risk factors and develop ethical, responsible and child protective sport and tourism through coherent, sustainable and integrated child protection strategies;

(t) Consider systematically incorporating a child and human rights impact assessment in the bidding criteria of organizers of major sporting events as preventive strategies;

(u) Design and introduce new educational and training programmes at the national and local levels for children and young people to build their self-esteem and other important life skills and values;

(v) Widen the possibilities of sporting programmes to motivate children to enrol in and attend school and to help improve educational performances;

(w) Promote practices that diminish the computerization effect on children and young people by making sporting curricula and programmes more attractive to children and young people, to steer them away from computers and other information technology towards more physical activities;

(x) Instil such values as friendship, fair play, solidarity, excellence and discipline;

(y) Organize special targeted competitions for traditional sport, designed to demonstrate ethnic traditions, practices and customs;

(z) Develop projects that address life skills and teach values, stressing the importance of contributing to constructive behaviours and respect for human rights;

(aa) Assist with social inclusion and the integration of marginalized groups;

(bb) Help combat obesity, chronic diseases, HIV/AIDS and other diseases to instil healthy behaviours generally;

(cc) Promote universality and the unity of people through a culture of peace and by building trust and bridges between groups in conflict;

(dd) Make use of sporting programmes to create job opportunities and develop skills;

(ee) Take into account the requirements for the socioeconomic development of communities in planning sporting events and recreational physical activities;

(ff) Facilitate communication through special sporting programmes, in particular to strengthen relationships between different communities and ethnic groups.

C. Combating discriminatory and other harmful or unfair practices in sport

90. The Advisory Committee calls on States and national authorities to:

(a) Prevent discrimination on all grounds, including race, colour, sex, gender, sexual orientation, language, origin or religion;

(b) Protect athletes' and coaches' rights by means of a universal written code of conduct in which their rights are clearly set out, to prevent any exploitation;

(c) Draw up a human rights code of conduct for all sporting organizations, including fans' associations, as a preventive measure with regard to human rights violations;

(d) Work for fair and equal distribution of sport sponsorships by gender;

(e) Counter the use of outdated coaching methods;

(f) Seek the prohibition of the trading of athletes whereby they are treated as commodities;

(g) Increase the implementation of anti-corruption regulations in all aspects related to sporting events;

(h) Overcome the lack of equal access to sport and recreational physical activity facilities and training times for all.

D. Media

91. The Advisory Committee urges States to:

(a) Take the necessary steps to guarantee the freedom of media and freedom of expression in general;

(b) Disseminate information on sporting fixtures and locations to people in all geographical areas;

(c) Help increase media coverage for less visible fields of sport, for example, Women's sport, sport for all and disability sport;

(d) Foster more transparency in sport and recreational physical activities;

(e) Contribute to raising the motivation of athletes, coaches and all persons involved in sport by focusing on the importance of participation as opposed to a "winning is all that matters" mentality;

(f) Mobilize the efforts of all stakeholders to counter racist and politicized comments and slander, which are widespread during sporting competitions and also at the Olympic Games, and which discredit the values of sport, including integrity, teamwork, excellence, respect, tolerance, fair play and friendship.

E. Education

92. The Advisory Committee encourages States and national and international organizations, including sporting organizations, to:

(a) Make values education part of the preparation of athletes, coaches and other officials and ensure that values such as the importance of participation over winning, respect for opponents, punctuality and solidarity are cross-cutting in educational programmes and curricula;

(b) Use curriculum planning for education programmes to support the right to play sport in the promotion of the spirit of friendship, mutual respect, solidarity and fair play;

(c) Advance quality physical education in sporting curricula, as a way to significantly contribute to the diffusion of human rights and the values of sport, including the Olympic values and ideal, among young people and children;

(d) Promote the establishment and development of national and international systems of human rights and Olympic education by means of best practice models.

United Nations A/HRC/30/51

General Assembly

Distr.: General
10 July 2015

Original: English

Human Rights Council
Thirtieth session
Agenda item 5
Human rights bodies and mechanisms

Reports of the Human Rights Council Advisory Committee on its fourteenth and fifteenth sessions

Note by the Secretariat

1. In accordance with paragraph 38 of the annex to Human Rights Council resolution 16/21, the annual report of the Human Rights Council Advisory Committee, consisting of the Committee's reports on its fourteenth (23–27 February 2015) and fifteenth (10–14 August 2015) sessions, will be considered by the Council at its thirtieth session, and will be the subject of an interactive dialogue with the Chair of the Committee.

2. The report of the Advisory Committee on its fourteenth session is contained in document A/HRC/AC/14/2.

3. The report of the Advisory Committee on its fifteenth session, which will be contained in document A/HRC/AC/15/2, will be made available to the Human Rights Council once it has been finalized.

GE.15-11639(E)

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United Nations A/HRC/30/52

General Assembly

Distr.: General
19 August 2015

Original: English

Human Rights Council
Thirtieth session
Agenda item 5
Human rights bodies and mechanisms

Report of the Expert Mechanism on the Rights of Indigenous Peoples on its eighth session, Geneva, 20-24 July 2015

Chair-Rapporteur: Alexey Tsykarev

Summary

The Expert Mechanism on the Rights of Indigenous Peoples held its eighth session from 20 to 24 July 2015. In addition to members of the Expert Mechanism, the participants in the session included representatives of States, parliaments, indigenous peoples, United Nations bodies, programmes and specialized agencies, non-governmental organizations, national human rights institutions and academic institutions.

The Expert Mechanism discussed follow-up to the World Conference on Indigenous Peoples, including the review of the mandate of the Expert Mechanism, and held a panel discussion on indigenous peoples' human rights in relation to business enterprises. It discussed the post-2015 development agenda, before moving to a discussion on the follow-up to thematic studies and advice.

The Expert Mechanism's study on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage was considered. Discussions on the United Nations Declaration on the Rights of Indigenous Peoples were also held, as well as a consultation on the United Nations system-wide action plan to ensure a coherent approach to achieving the ends of the Declaration.

The Expert Mechanism adopted the proposals to be submitted to the Human Rights Council at its thirtieth session. In particular, it adopted the study on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage, and the report summarizing the responses to the questionnaire seeking the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples.

GE.15-14057(E)

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I. Introduction

1. In its resolution 6/36, the Human Rights Council established the Expert Mechanism on the Rights of Indigenous Peoples as a subsidiary body to assist the Council in the implementation of its mandate by providing it with thematic expertise on the rights of indigenous peoples, as requested by the Council. In the resolution, the Council established that the thematic expertise would focus mainly on studies and research-based advice, and that the Expert Mechanism may suggest proposals to the Council for its consideration and approval.

II. Adoption of studies, reports and proposals

2. The Expert Mechanism adopted its study on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage and the report summarizing the responses to the questionnaire seeking the views of States and indigenous peoples on best practices with regard to possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples.

A. Adoption of the study on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage

3. The Expert Mechanism on the Rights of Indigenous Peoples:

(a) Refers to paragraph 5 of Human Rights Council resolution 27/13, in which the Council requested the Expert Mechanism to prepare a study on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage, including through their participation in political and public life, and to present it to the Council at its thirtieth session;

(b) Adopts the study on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage (A/HRC/EMRIP/2015/2);

(c) Authorizes the Chair-Rapporteur, in consultation with the other members of the Expert Mechanism, to make the necessary revisions to the study in the light of discussions carried out at its eighth session and to submit the final study to the Human Rights Council at its thirtieth session.

B. Adoption of the report summarizing the responses to the questionnaire seeking the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples

4. The Expert Mechanism on the Rights of Indigenous Peoples:

(a) Refers to paragraph 6 of Human Rights Council resolution 27/13, in which the Council requested the Expert Mechanism to continue to undertake, with the assistance of the Office of the United Nations High Commissioner for Human Rights, the questionnaire survey to seek the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies in order to attain the end goals of the United Nations Declaration on the Rights of Indigenous Peoples, with a

view to completing a final summary of responses for presentation to the Human Rights Council at its thirtieth session;

(b) Adopts the updated report summarizing the responses to the questionnaire seeking the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples (A/HRC/EMRIP/2015/CRP.1);

(c) Authorizes the Chair-Rapporteur, in consultation with the other members of the Expert Mechanism, to make the necessary revisions to the report in the light of discussions carried out at its eighth session and to submit the report to the Human Rights Council at its thirtieth session.

C. Proposals

Proposal 1: Theme of the Expert Mechanism's next study

5. The Expert Mechanism on the Rights of Indigenous Peoples proposes to the Human Rights Council that it authorize the Expert Mechanism to undertake a study on one of the following themes:

(a) Discrimination facing indigenous peoples in business and access to financial services, with specific reference to indigenous women entrepreneurs;

(b) The right of indigenous peoples to health, with a focus on children and youth;

(c) The role of indigenous peoples' organizations and civil society, including human rights defenders, in the promotion and protection on the rights of indigenous peoples.

Proposal 2: Half-day panel discussion at the thirty-third session of the Human Rights Council

6. The Expert Mechanism on the Rights of Indigenous Peoples proposes to the Human Rights Council that it organize at its thirty-third session a half-day panel discussion on violence against indigenous women and girls, bearing in mind the importance attached to that theme in the outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples (see General Assembly resolution 69/2, paras. 18 and 19).

Proposal 3: Follow-up to the World Conference on Indigenous Peoples

7. The Expert Mechanism on the Rights of Indigenous Peoples:

(a) Proposes to the Human Rights Council that it include the Expert Mechanism in and take into consideration its views during the review of the mandate of the Expert Mechanism, taking into account the views of indigenous peoples, as indicated in paragraph 28 of the outcome document of the World Conference on Indigenous Peoples;

(b) Urges the Human Rights Council to take measures to ensure that the Expert Mechanism is provided with additional human and financial resources commensurate with its new mandate, including for intersessional activities;

(c) Proposes to the Human Rights Council that it urge Member States to cooperate with indigenous peoples to develop and implement national action plans, strategies or other measures, where relevant, to achieve the ends of the Declaration, as indicated in paragraph 7 of the outcome document of the World Conference on Indigenous Peoples;

(d) Also proposes to the Human Rights Council that it encourage States to follow up on paragraph 10 of the outcome document of the World Conference on Indigenous Peoples, in which they committed themselves to working with indigenous peoples to disaggregate data, as appropriate, or conduct surveys and to utilizing holistic indicators of indigenous peoples' well-being to address the situation and needs of indigenous peoples and individuals, in particular older persons, women, youth, children and persons with disabilities.

Proposal 4: Reporting to the General Assembly

8. The Expert Mechanism on the Rights of Indigenous Peoples proposes to the Human Rights Council that it request the Expert Mechanism to report to the General Assembly on a biennial basis, in addition to its annual reporting to the Council.

Proposal 5: Business and human rights

9. The Expert Mechanism on the Rights of Indigenous Peoples proposes to the Human Rights Council that it take measures to include the Expert Mechanism in the Council's ongoing initiatives relating to business and human rights.

Proposal 6: Post-2015 development agenda

10. The Expert Mechanism on the Rights of Indigenous Peoples proposes that the Human Rights Council urge States to take measures to ensure the participation of indigenous peoples, in particular indigenous youth, in national processes for the implementation of the new development goals.

Proposal 7: Implementation of the United Nations Declaration on the Rights of Indigenous Peoples

11. The Expert Mechanism on the Rights of Indigenous Peoples:

(a) Proposes that the Human Rights Council urge States and indigenous peoples to report on the measures taken to implement the rights enshrined in the United Nations Declaration on the Rights of Indigenous Peoples, by reporting to the Expert Mechanism on actions they have taken to implement the commitments listed in the outcome document of the World Conference on Indigenous Peoples, in particular those referred to in paragraph 8, in which Member States commit themselves to cooperating with indigenous peoples to develop and implement national action plans, strategies or other measures to achieve the ends of the Declaration;

(b) Reiterates its proposal that the Human Rights Council review the language and terminology used in United Nations documents pertaining to the rights of indigenous peoples with a view to ensuring that they reflect the terminology contained in the United Nations Declaration on the Rights of Indigenous Peoples. It calls upon the United Nations and other international organizations to review their spelling rules with a view to using initial capital letters in spelling the term "indigenous peoples" (see A/HRC/24/49, para. 9);

(c) Proposes that the Council urge Member States to contribute to the United Nations Voluntary Fund for Indigenous Peoples and acknowledge the work the Fund has achieved in the 30 years since its establishment.

III. Organization of the session

A. Attendance

12. The Expert Mechanism on the Rights of Indigenous Peoples held its eighth session in Geneva, from 20 to 24 July 2015. The members of the Expert Mechanism — Albert Kwokwo Barume (Democratic Republic of the Congo), Albert Deterville (Saint Lucia), International Chief Wilton Littlechild (Canada), Edtami Mansayagan (Philippines) and Alexey Tsykarev (Russian Federation) — took part in the session.

13. The participants in the eighth session of the Expert Mechanism included representatives of Member States, parliaments, indigenous peoples, United Nations programmes, bodies and specialized agencies, national human rights institutions, non-governmental organizations and academic institutions (see annex I).

14. Also participating in the session were Victoria Tauli-Corpuz, the Special Rapporteur on the rights of indigenous peoples, Megan Davis, the Chair of the Permanent Forum on Indigenous Issues, Claire Charters, a member of the Board of Trustees of the United Nations Voluntary Fund for Indigenous Peoples, and Francisco Cali Tzay, the Chair of the Committee on the Elimination of Racial Discrimination. The Assistant Secretary-General for Economic Development participated in the sessions on agenda item 3: Follow-up to the World Conference on Indigenous Peoples, including the review of the mandate of the Expert Mechanism.

B. Documentation

15. The Expert Mechanism had before it the provisional agenda and annotations thereto (A/HRC/EMRIP/2015/1 and Add.1), as prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the study on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage.

16. The Expert Mechanism also had before it the following conference room papers: the updated draft report summarizing the responses to the questionnaire seeking the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples (A/HRC/EMRIP/2015/CRP.1); the report of the open-ended meeting of indigenous peoples on the follow-up to the World Conference on Indigenous Peoples (A/HRC/EMRIP/2015/CRP.2); the submission from the monitoring mechanism regarding the implementation of the United Nations Declaration on the Rights of Indigenous Peoples in Aotearoa/New Zealand (A/HRC/EMRIP/2015/CRP.3); the compilation of calls to action issued by the Truth and Reconciliation Commission of Canada relating to the United Nations Declaration on the Rights of Indigenous Peoples (A/HRC/EMRIP/2015/CRP.4); and the update on the first World Indigenous Peoples' Games (A/HRC/EMRIP/2015/CRP.5).

C. Opening of the session

17. Mr. Deterville, the outgoing Chair-Rapporteur of the Expert Mechanism, opened the eighth session of the Expert Mechanism and welcomed the United Nations High Commissioner for Human Rights and the President of the Human Rights Council.

18. The High Commissioner for Human Rights welcomed all participants and highlighted some key recent and future events that would have a significant bearing on the

rights of indigenous peoples, including the Special Summit on Sustainable Development. Several challenges affected indigenous peoples, including the denial of their right to self-determination, discrimination in education and access to justice and exclusion from public life, all of which led to chronic marginalization. Extractive industries and industrial-scale agriculture had led to violations of indigenous peoples' rights to their lands, their right to a clean environment, and free, prior and informed consent.

19. The High Commissioner reminded participants of the commitments made by States at the World Conference on Indigenous Peoples, highlighting some positive developments, such as the report of the Truth and Reconciliation Commission of Canada, but noting that few States had followed up on the commitment to develop action plans to implement the Declaration on the Rights of Indigenous Peoples. He cited examples of his Office's work in advancing the rights of indigenous peoples, focusing on capacity-building, protection and support for activists defending the rights of indigenous peoples. He closed by referring to the review of the mandate of the Expert Mechanism, emphasizing that the review must be coupled with a commitment to follow up on recommendations, together with indigenous peoples.

20. In his opening statement, the President of the Human Rights Council recognized the work of the Expert Mechanism and noted that its studies and advice had been well received by the Council and had contributed positively to the efforts to further the protection of the rights of indigenous peoples. He was grateful to the Expert Mechanism for the study to be presented at the current session. The Council attached great importance to the United Nations Declaration on the Rights of Indigenous Peoples, including within the framework of the universal periodic review. Emphasizing that the Council was ready to undertake the review of the mandate of the Expert Mechanism, as requested in the outcome document of the World Conference on Indigenous Peoples, he hoped that the process would result in a more robust mandate for the Expert Mechanism. He also emphasized the importance of indigenous peoples' participation in relevant United Nations processes and forums.

D. Election of officers

21. Mr. Deterville invited the members of the Expert Mechanism to nominate a Chair-Rapporteur and Vice-Chair-Rapporteur for its eighth session. Mr. Barume nominated Mr. Tsykarev as Chair-Rapporteur, and International Chief Littlechild and Mr. Deterville as Vice-Chairs-Rapporteurs. All three were then appointed by acclamation.

22. The Chair-Rapporteur, Mr. Tsykarev, thanked the other members of the Expert Mechanism for his election. He welcomed the new member of the Expert Mechanism, Mr. Barume.

23. The Chair-Rapporteur highlighted the work of the Expert Mechanism since the last session. That had included the study on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage. The study was informed by an expert seminar jointly organized by the University of Lapland (Finland) and OHCHR. The Chair-Rapporteur discussed the Expert Mechanism's work on the questionnaire seeking the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples.

24. The Chair-Rapporteur then outlined the Expert Mechanism's activities during the year, including its participation in the World Conference on Indigenous Peoples and in the fourteenth session of the United Nations Permanent Forum on Indigenous Issues. He drew attention to the Expert Mechanism's first intersessional meeting, which had been held at the Canadian Museum for Human Rights in Winnipeg, Canada in March 2015, and thanked the

Government of Canada for its support for that initiative. He provided an overview of the agenda of the session and invited participants to contribute actively to the deliberations.

E. Adoption of the agenda

25. The Expert Mechanism adopted the agenda and annotations thereto, containing the programme of work of the eighth session.

IV. Follow-up to the World Conference on Indigenous Peoples, including the review of the mandate of the Expert Mechanism

26. Mr. Deterville recalled that the General Assembly, in the outcome document of the World Conference on Indigenous Peoples, invited the Human Rights Council, taking into account the views of indigenous peoples, to review the mandates of its existing mechanisms, in particular the Expert Mechanism on the Rights of Indigenous Peoples, with a view to modifying and improving the Expert Mechanism so that it could more effectively promote respect for the Declaration on the Rights of Indigenous Peoples, including by better assisting Member States to monitor, evaluate and improve the achievement of the ends of the Declaration (para. 28).

27. Mr. Deterville presented some preliminary ideas for the review of the mandate, which had been agreed upon by the members of the Expert Mechanism, including the following:

- The Expert Mechanism should remain a subsidiary body of the Human Rights Council and maintain some elements of its current mandate, including the provision of thematic studies;
- The Expert Mechanism should play a stronger role in terms of facilitating the implementation of the Declaration at the national and international levels. That should include supporting States in the preparation of national strategies for the implementation of the Declaration and engaging with the private sector in order to overcome obstacles to the implementation of the Declaration;
- The Expert Mechanism should have an increased role in facilitating dialogue between States and indigenous peoples to discuss issues of mutual concern. That should also include engagement with regional organizations and national human rights institutions;
- The Expert Mechanism should engage more actively with the universal periodic review, the special procedures and the human rights treaty bodies. That should include assisting States to implement recommendations relating to indigenous peoples issued by those mechanisms and serving as a bridge between indigenous peoples and the United Nations human rights system;
- The Expert Mechanism should continue to collect and disseminate information on good practices in the implementation of the Declaration, and issue general comments regarding the provisions of the Declaration.

28. The Assistant Secretary-General for Economic Development reported on follow-up to the World Conference on Indigenous Peoples. The Secretary-General was developing a system-wide action plan, in collaboration with indigenous peoples, to ensure a coherent approach to achieving the ends of the Declaration on the Rights of Indigenous Peoples. Barriers to implementation did not necessarily relate to lack of coordination within the

United Nations system, but rather to issues such as lack of political will to implement the rights of indigenous peoples, including land rights; lack of a common understanding of the key terms in the Declaration and of the meaning and interpretation of the rights contained therein; and lack of disaggregated data collection.

29. Referring to the commitment of States to consider ways to enable the participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them (outcome document, para. 33), he noted that good practices were currently being reviewed. He recalled that the report of the Secretary-General on progress made in the implementation of the outcome document (A/70/84) contained the proposal that the President of the General Assembly could appoint co-facilitators or advisers, including indigenous representatives, to lead an open-ended consultation process on indigenous peoples' participation at the United Nations.

30. The Special Rapporteur on the Rights of Indigenous Peoples, establishing links between the World Conference on Indigenous Peoples and the post-2015 development agenda, suggested that the operationalization of the outcome document of the World Conference was critical in ensuring that indigenous peoples were not left behind in the implementation of the new development goals. Echoing the concerns of many other participants, the Special Rapporteur stated that formulating national action plans would be key to implementing the commitments States had made in the outcome document. With regard to the review of the mandate of the Expert Mechanism, she noted that there was broad consensus among many State representatives on enhancing the capacity of the United Nations mechanisms on indigenous peoples to advise States on the implementation of the Declaration on the Rights of Indigenous Peoples and the outcome document of the World Conference.

31. Representatives of States and indigenous peoples reaffirmed their strong support for the contribution of the Expert Mechanism in improving the rights of indigenous peoples. Many representatives supported the call for a strengthened mandate for the Expert Mechanism to improve further the rights of indigenous peoples. Specific recommendations included broadening the mandate to include a function to monitor the implementation of the Declaration that would promote and protect the rights enshrined therein and discourage violations; preparing reports on the implementation of the Declaration; issuing general comments and interpretations on the provisions of the Declaration; providing technical assistance on implementation to States, indigenous peoples, the United Nations system and the private sector; and collecting and disseminating information on good practices. Many representatives recommended that any broadening of the mandate should not result in a duplication of the mandates of either the Special Rapporteur on the rights of indigenous peoples or the Permanent Forum on Indigenous Issues. Securing additional financial resources for the possible increased role of the Expert Mechanism was also considered vital.

32. Significant emphasis was placed on States' commitment to take action to achieve the ends of the Declaration at the national level, through legal, policy and administrative measures, particularly national action plans and strategies. Positive examples were provided, including budgetary reviews Governments had carried out to evaluate the policy, administrative and legislative changes needed to implement the Declaration, and indigenous forums that had been established at the national level to monitor implementation.

33. In addition to the review of the mandate of the Expert Mechanism several participants commented on other aspects of follow-up to the World Conference, particularly the participation of indigenous peoples in United Nations processes. Several indigenous representatives supported the call for a new accreditation procedure to ensure the direct, meaningful and effective participation of indigenous peoples, based on mutual respect and partnerships between indigenous peoples and States, in accordance with article 18 of the

Declaration. Participants highlighted the need for selection criteria that differentiated indigenous peoples from civil society and academics.

34. It was also recommended that the Human Rights Council take up the invitation contained in the outcome document to consider examining the causes and consequences of violence against indigenous women and girls, including by holding a panel discussion on the rights of indigenous women and by encouraging the Secretary-General to issue specific recommendations for action to address that issue. Some participants highlighted the need to be cognizant of the multiple forms of discrimination faced by indigenous persons with disabilities and to ensure that indigenous persons with disabilities were always taken into consideration by human rights mechanisms.

V. Panel discussion on indigenous peoples' human rights in relation to business enterprises

35. Mr. Barume opened the panel discussion on indigenous peoples' rights in relation to business enterprises by welcoming participants and introducing the panellists. He drew attention to the Expert Mechanism's work on that subject, including the follow-up report on indigenous peoples and the right to participate in decision-making, with a focus on extractive industries (A/HRC/21/55).

36. The OHCHR Adviser on Business and Human Rights provided an overview of the Guiding Principles on Business and Human Rights. She discussed the historical background to the Guiding Principles and its key elements: the State's duty to protect human rights, the corporate responsibility to respect human rights, and access to remedy for victims. She provided examples of how both States and enterprises had implemented the Guiding Principles. She highlighted opportunities for indigenous peoples within that process, including the use of the framework for advocacy and policy development and indigenous peoples' participation in national action plan processes.

37. Pavel Sulyandziga, a member of the Working Group on the issue of human rights and transnational corporations and other business enterprises, emphasized the importance of dialogue between all stakeholders: indigenous peoples, businesses and States. He discussed the work of the Working Group in promoting the effective implementation of the Guiding Principles on Business and Human Rights, including through the development of national action plans, and urged indigenous peoples to use that instrument as a tool for the protection of their rights at the national and international levels. He also drew attention to the fact that, in its reports to the Human Rights Council and the General Assembly, the Working Group had addressed the impact of business enterprises on the rights of indigenous peoples. He emphasized the importance of free, prior and informed consent and stressed that the implementation of the Guiding Principles should be informed by the United Nations Declaration on the Rights of Indigenous Peoples. He encouraged indigenous peoples to participate in the Forum on Business and Human Rights, which would take place in Geneva from 16 to 18 November 2015. He stressed that the endorsement of national action plans on business and human rights could lead to national discussions on human rights violations linked to business and could also become valuable remedy tools.

38. Agnes Leina, a representative of the Indigenous Peoples of Africa Coordinating Committee, provided a regional perspective from Africa, focusing on potential risks to indigenous peoples stemming from extractive industries and the Programme for Infrastructure Development in Africa, supported by the African Development Bank, among others. She emphasized the fact that, under the current development model in Africa, the gains from extractive industry and infrastructure development tended to benefit a small

group of investors, while the losses, such as environmental damage, depletion of natural resources and displacement of communities, were borne by society or the community as a whole. She highlighted the importance of including all stakeholders when investment decisions were made, including indigenous peoples, and of creating a climate of dialogue between all stakeholders.

39. Luis Vittor, a representative of the Coordinadora Andina de Organizaciones Indígenas, also focused on the impact of extractive industries and infrastructure megaprojects on the rights of indigenous peoples. Using two case studies from Latin America, he illustrated how extractive industries could negatively impact the rights of indigenous peoples to their lands, territories and resources, their right to health, cultural rights and the right to determine their own priorities for development. He pointed out that one of the main challenges faced by indigenous peoples with regard to extractive industries was access to remedy. He emphasized that, while there were useful instruments, such as the Guiding Principles on Business and Human Rights and the Declaration on the Rights of Indigenous Peoples, the implementation gap remained enormous, which was having dire consequences for indigenous peoples.

40. Famark Hlawncheng, the Chair of the Asia Indigenous Peoples Pact, presented a regional perspective from Asia. He stressed the importance of free, prior and informed consent, a principle that was often violated by business enterprises. He illustrated with examples how infrastructure and extractive projects often resulted in forced evictions, harassment of indigenous human rights defenders, and sometimes in enforced disappearances or extra-judicial killings. He pointed out that indigenous peoples faced barriers in access to justice in relation to those situations owing to limited financial resources, biased judicial systems and limited access to redress mechanisms.

41. Following the panel discussion, participants raised questions regarding possibilities for indigenous communities to have meaningful dialogue with business corporations and extractive industries. The panellists indicated that developing mechanisms for implementing the Guiding Principles on Business and Human Rights at the national level could be one of the ways of addressing indigenous peoples' concerns.

42. Statements from indigenous participants reflected a widespread pattern of human rights violations against indigenous peoples, raising many of the concerns discussed by the panellists, such as lack of free, prior and informed consent; lack of access to remedies; and the negative impact of extractive industries on rights to lands, territories and resources. They also highlighted the criminalization of protests by indigenous peoples as a growing concern.

43. In view of the range of violations faced by indigenous peoples, some participants considered a binding international instrument on business and human rights crucial for providing remedies for affected communities.

44. Mr. Barume thanked all the panellists and participants for contributing to the discussion. With specific reference to Africa, he pointed out that the historical and persistent non-recognition of traditional land rights of African indigenous communities was a contributing factor to indigenous peoples' particular vulnerability to transnational corporations and other business enterprises. He indicated that stronger and legally protected rights of indigenous peoples over their lands were critical to the implementation of free, prior and informed consent. He drew a parallel with the recent landmark decision by the Supreme Court of Belize, which had ruled in favour of Maya land rights, affirming constitutional protection for their ancestral land rights and making explicit reference to the United Nations Declaration on the Rights of Indigenous Peoples. The ruling had affirmed that the right to free, prior and informed consent was a fundamental tenet of traditional land

tenure before extractive operations were undertaken on the territory of the Maya communities.

45. He indicated that national human rights institutions could be play a key role at the national level in the implementation of the Guiding Principles on Business and Human Rights. He emphasized the need to engage chambers of commerce as relevant stakeholders at the national level during discussions about business enterprises and human rights.

46. Mr. Tsykarev supported the establishment of national action plans on business and human rights, which should include legislative efforts, codification and systematization of national laws linked to indigenous peoples and business enterprises. Those efforts would also facilitate the harmonization of legislation at all levels. He underlined the connections between the cultural rights of indigenous peoples and the influence of industries, which was highlighted in the study of the Expert Mechanism on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage. He proposed making use of the capacity of the Expert Mechanism to facilitate a sustainable process of consultation between indigenous peoples, governments and businesses. He suggested organizing a side event at the forthcoming Forum on Business and Human Rights on indigenous peoples' human rights and business enterprises.

VI. Post-2015 development agenda and indigenous peoples' rights

47. Mr. Mansayagan, opening the discussion, pointed out some of the gaps in the post-2015 development goals from the perspective of indigenous peoples. He stated that the post-2015 development agenda would constitute the international community's road map for development in the forthcoming years. Referring to the conclusion of the panel discussion during the seventh session of the Expert Mechanism, he outlined some key elements, such as the need to fully integrate indigenous peoples' perspectives into the post-2015 development agenda; the need for indicators of well-being and sustainability instead of purely economic indicators; and the need to recognize the right to free, prior and informed consent. He highlighted the fact that, following a proposal from the Expert Mechanism, the Human Rights Council had encouraged States to give due consideration to all the rights of indigenous peoples in the process of the elaboration of the post-2015 development agenda and to take measures to ensure the participation of indigenous peoples, and in particular indigenous youth, in national processes for the implementation of the new development goals (Council resolution 27/13, para. 15). He expressed concern at the absence of references to free, prior and informed consent in the final draft of the goals, and at the fact that indigenous peoples were grouped together with other vulnerable sectors of society.

48. Indigenous representatives regretted the fact that their concerns had been inadequately reflected in the final draft of the sustainable development goals and the fact that indigenous peoples were explicitly mentioned under only two targets (goal 2 and goal 4). The new development goals must reflect the concerns of indigenous people , in line with the Declaration on the Rights of Indigenous Peoples. Some participants stated that national human rights institutions could be instrumental partners in ensuring that indigenous peoples participated in national-level plans and strategies for the implementation of the new goals. Participants commended the priority given to disaggregated data in the post-2015 development goals and stressed the need to include such data across all relevant indicators and targets of the 17 goals.

VII. Follow-up to thematic studies and advice

49. Mr. Mansayagan recalled the mandate of the Expert Mechanism and listed the studies and advice it had issued previously. He recalled that the studies and advice were intended to provide a better understanding of the provisions of the Declaration on the Rights of Indigenous Peoples and to suggest specific action that States, indigenous peoples, civil society, international organizations, national human rights institutions and others could take in order to further its implementation. He noted that the studies of the Expert Mechanism placed special emphasis on the participation of indigenous peoples themselves in decisions that affected them.

50. A representative of the Indigenous Persons with Disabilities Global Network acknowledged the usefulness of the previous studies of the Expert Mechanism as guidance tools for advocacy and policy development. The Network suggested that the Expert Mechanism consult indigenous persons with disabilities in the development of its future studies and advice.

51. Mr. Tsykarev urged States to ensure that initiatives that had been identified as good practices in previous studies of the Expert Mechanism were not weakened. He encouraged both States and indigenous peoples to use the opportunity afforded by the agenda item to keep the Expert Mechanism abreast of recent developments regarding the themes of its previous studies.

VIII. Study and advice on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage

52. Mr. Tsykarev expressed his gratitude to the University of Lapland, which had, jointly with OHCHR, organized an expert seminar on the topic of the study in February 2015. He thanked all the experts who had participated in the seminar for their valuable contribution to the study and all the States, indigenous peoples' organizations, non-governmental organizations and national human rights institutions that had provided submissions to the study. He gave a detailed overview of the study, focusing on the advice with respect to cultural heritage that the Expert Mechanism had provided to States, indigenous peoples, international organizations and museums.

53. The draft of the study was well received by representatives of State and indigenous peoples. Participants commended the Expert Mechanism for highlighting the holistic and intergenerational nature of cultural heritage, and emphasizing the links between cultural heritage and lands, territories and resources. Indigenous representatives also welcomed the emphasis placed on free, prior and informed consent in relation to cultural and natural heritage. Given the alarming pace at which indigenous languages were being lost, several participants drew attention to the need to preserve and promote indigenous languages through effective mother tongue education programmes. Participants also requested the Expert Mechanism to pay special attention to the need to revitalize the customary practices and traditional governance systems of indigenous peoples.

54. Many participants highlighted the fact that, in paragraph 27 of the outcome document of the World Conference, States committed themselves to developing fair, transparent and effective mechanisms for access to and repatriation of ceremonial objects and human remains. During the discussion, indigenous representatives discussed several cases in which they had been unable to recover ceremonial objects, human remains and other articles related to their heritage from museums, collectors and other repositories.

55. Representatives of States recognized the importance of revitalizing and preserving the cultural heritage of indigenous peoples and discussed many ongoing measures in their respective countries. They highlighted specific legislative measures, support for education in native/mother tongues, the establishment of institutions for promoting indigenous cultures, budget allocations for the preservation of indigenous art and culture, along with research and studies on the contribution of indigenous cultural heritage to mainstream society. Similarly, national human rights institutions shared some exemplary action they had taken to protect and promote indigenous peoples' right to cultural heritage.

56. Mr. Barume remarked that Convention concerning the Protection of the World Cultural and Natural Heritage of the United Nations Educational, Scientific and Cultural Organization (UNESCO) had huge potential to strengthen the protection of indigenous peoples' rights. However, in order for that to be put into practice, UNESCO and its World Heritage Committee must align their policies and programmes with the international human rights standards relating to indigenous peoples, including regional and national instruments. He regretted the fact that the World Heritage Committee had declared World Heritage Sites in many parts of the world in a manner that did not respect international standards that safeguarded indigenous peoples' rights, particularly the principle of free, prior and informed consent. To address that gap, he called upon UNESCO, the World Heritage Committee and other relevant organizations to strengthen their knowledge on indigenous peoples' rights through training and awareness-raising activities. He also called upon Member States to evaluate and recognize the contribution that indigenous peoples' cultural heritage made to national economies.

IX. United Nations Declaration on the Rights of Indigenous Peoples

57. International Chief Littlechild provided an overview of the Expert Mechanism's work in the area of the United Nations Declaration on the Rights of Indigenous Peoples, including a review of the final summary of the responses to the questionnaire seeking the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the Declaration. He thanked the staff of the Faculty of Law at the University of Manitoba for their assistance in preparing the summary of the responses, and all the States and indigenous peoples who had responded. He referred to the World Conference on Indigenous Peoples as a significant step forward for the recognition of the rights of indigenous peoples. He reminded States that the outcome document of the World Conference was a reaffirmation of their support for the Declaration and the commitments made therein.

58. Claire Charters, a member of the Board of Trustees of the United Nations Voluntary Fund for Indigenous Peoples, delivered a statement on behalf of the Board. She welcomed the thirty-two beneficiaries of the Fund present at the session and thanked the Member States that had contributed to the Fund. She highlighted the fact that 2015 marked the thirtieth anniversary of the Fund and that over the course of the 30 years, the Fund had supported the participation of 2,000 representatives at United Nations meetings. She pointed out the achievements of the beneficiaries of the Voluntary Fund and provided an overview of the Board of Trustees' activities in 2014-2015. She concluded by encouraging all Governments to consider supporting the work of the Fund.

59. Many participants noted that, while there had been significant progress, indigenous peoples remained among the most marginalized groups in many parts of the world. The systematic violation of the rights enshrined in the Declaration was ongoing and pervasive. A variety of obstacles and barriers to the implementation of the Declaration were identified by participants. They included the lack of political will and financial resources to

implement indigenous peoples' rights, misunderstandings regarding key terms in the Declaration, inconsistencies between State legislation and the Declaration, "rights ritualism" on the part of some States, a lack of awareness and a lack of capacity among relevant sectors of society. Furthermore, the refusal to recognize the status of some indigenous peoples had led to systematic violations of their human rights, in particular rights to lands, territories and resources, identity, culture and self-determination.

60. In addition, participants identified an urgent need for States to intensify their efforts to achieve the ends of the Declaration and implement the rights contained therein, including the principle of free, prior and informed consent; lands, territories and resources rights; treaty rights; self-determination; cultural rights; and the right to participate in decision-making.

61. It was emphasized that, in order to halt violations of the human rights of indigenous peoples and achieve the ends of the Declaration, the outcome document of the World Conference on Indigenous Peoples should be used as a guide for action and the realization of the rights of indigenous peoples. Importantly, it was noted that through the adoption of the outcome document, specifically paragraphs 3 and 4, States reaffirmed their solemn commitment to the rights contained in the Declaration.

62. Megan Davis, the Chair of the Permanent Forum on Indigenous Issues, highlighted forthcoming events and processes which would impact indigenous peoples and the implementation of the Declaration. They included: deliberations concerning the post-2015 development goals; the third International Conference on Financing for Development; the twenty-first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change; negotiations at the World Intellectual Property Organization concerning traditional cultural expressions and traditional knowledge; the revision of the World Bank social and economic safeguards; and, of particular relevance in the light of the Expert Mechanism's recent study on cultural heritage, the World Heritage Committee's review of its operational guidelines on the nomination of World Heritage Sites.

63. On the issue of the involvement of indigenous peoples in such events, many participants advocated for the creation of a specific accreditation system for indigenous peoples' governing institutions. Participants stated that a unique accreditation mechanism would work to implement the right of indigenous peoples to participate in decision-making, and recognize the unique status of indigenous peoples' governing institutions. The mechanism should be governed by flexible modalities that took into account the unique circumstances of indigenous peoples globally.

64. Many participants emphasized that States should create national action plans for the achievement of the ends of the Declaration in partnership with indigenous peoples and consistent with the rights of the Declaration. The national action plans should incorporate awareness-raising programmes to promote widespread understanding of the Declaration, including through the media. It was also recommended that the universal periodic review should require States to report on the arrangements for national action plans and other measures to implement the Declaration.

65. Many participants noted that regional and national human rights institutions played an important role in the monitoring, protection and implementation of the rights of indigenous peoples. There was one example of indigenous peoples themselves taking steps at the national level to monitor the implementation of the Declaration. The Monitoring Mechanism of the National Iwi Chairs Forum from New Zealand/Aotearoa, which made its inaugural statement at the eighth session of the Expert Mechanism, provided a report on the implementation of the Declaration in New Zealand/Aotearoa (A/HRC/EMRIP/2015/CRP.3).

66. Many participants emphasized that increasing international tourism had often led to the violations of the rights of indigenous peoples to their lands, territories and resources, sacred sites and cultural locations, the right to self-determination and the right to determine their own development. Similarly, many participants discussed the negative effects of militarization, particularly acts of violence against and extra-judicial killings of indigenous peoples and the violations of their rights relating to traditional lands, territories and resources. They highlighted how militarization and development often combined to feed into serious and systematic violations of indigenous peoples' human rights.

X. Proposals to be submitted to the Human Rights Council

67. The Chair-Rapporteur invited observers to share their recommendations regarding the Expert Mechanism's proposals to the Human Rights Council.

68. Some participants provided suggested themes for future studies of the Expert Mechanism, including links between militarization, development and the rights of indigenous peoples and a study focusing on mechanisms for redress, remedies, restitution and repatriation in conformity with articles 11, 27, 28 and 40 of the Declaration. Other suggested themes included the ways in which national human rights institutions could aid in the promotion and protection of the rights of indigenous peoples; human rights violations impacting indigenous peoples in the field of tourism; and genocide and indigenous peoples.

69. There were some general proposals, including that the Expert Mechanism, through the Human Rights Council, should encourage treaty bodies and the Working Group on the Universal Periodic Review to scrutinize the reports and human rights records of States in order to address rights ritualism effectively. That should include ensuring that States claims were systematically compared to the concerns raised by indigenous peoples and civil society.

70 The Chair-Rapporteur suggested that the Expert Mechanism could examine actions and policies of financial institutions that had negative impacts on indigenous peoples' rights.

XI. Consultation on the United Nations system-wide action plan to ensure a coherent approach to achieving the ends of the Declaration on the Rights of Indigenous Peoples

71. The eighth session provided the time for a consultation with States and indigenous peoples on the United Nations system-wide action plan to ensure a coherent approach to achieving the ends of the Declaration, as called for in paragraph 31 of the outcome document of the World Conference on Indigenous Peoples. The consultation was facilitated by the Department of Economic and Social Affairs, in cooperation with the Office of the United Nations High Commissioner for Human Rights.

72. A number of Member States expressed their support for the development of the action plan. Indigenous representatives, while also supportive of the development of the action plan, raised a number of concerns, including the need to catalogue and disseminate good practices of United Nations entities in relation to indigenous peoples and the need to address violence against indigenous women. They also stressed the importance of United Nations entities working more closely with indigenous peoples, consulting them and identifying specific focal points or offices that work on indigenous peoples' issues.

73. A number of speakers said that, although the action plan was to be developed within existing resources, that would constitute a major challenge to its implementation. The

Special Rapporteur on the rights of indigenous peoples noted that a number of United Nations entities had already developed specific policies on engagement with indigenous peoples, as a good practice that other entities could follow. However, she also noted that there were limited financial and human resources dedicated to indigenous peoples' issues within the United Nations system, and those resources were often difficult to measure.

74. The consultation served as a useful forum to clarify the following elements of the action plan:

- The action plan will focus on a limited number of clearly identifiable actions that the United Nations system will undertake within the next two years.
- According to the outcome document, the action plan is to be developed within existing resources. No financial resources have yet been committed to the implementation of the action plan. A possible element of the action plan may involve concerted fundraising efforts for projects, programmes and mechanisms that deal specifically with indigenous peoples.
- There is a general agreement that one of the major obstacles to the implementation of the Declaration on the Rights of Indigenous Peoples is a general lack of awareness of the Declaration among all stakeholders. Consequently, awareness-raising and advocacy will be an important element of the action plan.
- It is important to ensure coherence between the normative work at headquarters and the programmatic work at the country level. To this effect, the United Nations Development Group Guidelines on Indigenous Peoples' Issues were adopted on 1 February 2008. Those Guidelines are a valuable tool and the action plan will take advantage of this as well as other existing mechanisms.
- It is important to strengthen the capacities of indigenous peoples to help ensure the implementation of the Declaration.
- The action plan should also invigorate efforts to strengthen the capacities of United Nations staff to work on issues related to indigenous peoples.

XII. Adoption of reports, studies and proposals

75. At the last meeting of its eighth session, the Expert Mechanism adopted its study and advice on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage, including through their participation in political and public life, and the report summarizing the responses to the questionnaire seeking the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples. All proposals were adopted by consensus by the members of the Expert Mechanism.

76. The members of the Expert Mechanism also adopted the provisional agenda of the ninth session (see annex II).

Annex I

List of participants

States Members of the United Nations represented by observers

Algeria, Argentina, Armenia, Australia, Austria, Bangladesh, Bolivia (Plurinational State of), Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Denmark, Egypt, Estonia, Finland, France, Germany, Ghana, Greece, Guatemala, Haiti, Honduras, India, Indonesia, Japan, Latvia, Luxembourg, Malaysia, Mauritius, Mexico, Morocco, Myanmar, New Zealand, Niger, Norway, Panama, Paraguay, Peru, Philippines, Republic of Moldova, Russian Federation, South Africa, Spain, Sri Lanka, Switzerland, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela (Bolivarian Republic of).

Non-member State represented by an observer

Holy See

United Nations mandates, mechanisms, bodies, specialized agencies, funds and programmes represented by observers

International Labour Organization; Special Rapporteur on the rights of indigenous peoples; Permanent Forum on Indigenous Issues; United Nations Educational, Cultural and Scientific Organization; United Nations Population Fund; World Bank; World Intellectual Property Organization.

Intergovernmental organizations, regional organizations and mechanisms in the field of human rights represented by observers

Council of Europe; European Union; Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean.

National and international human rights institutions represented by observers

Australian Human Rights Commission, International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, New Zealand Human Rights Commission, Human Rights Commission of Malaysia.

Academics and experts on indigenous issues represented by observers from the following institutions

The City Law School, City University London; L'École des hautes études en sciences sociales; Leuphana University of Lüneburg; Structural Analysis of Cultural Systems, Berlin; Te Pūtahi-a-Toi (School of Maori Art, Knowledge and Education), Massey University; Universidade Federal de São Carlos; Universidad Carlos III de Madrid; Universidad de Deusto; University of Amsterdam; University of Ottawa.

Non-governmental organizations and indigenous nations, peoples, organizations and parliamentarians

Africa Culture International (Human Rights); African Commission of Health and Human Rights Promoters (CAPSDH); Aliansi Masyarakat Adat Nusantara; Articulação dos Povos Indígenas do Brasil; Asia Indigenous Peoples Pact; Assemblée des Arméniens d'Arménie occidentale; Assembly of First Nations; Association Culturelle ATH Koudia de Kabylie; Association Culturelle Tamazgha; Association Espoir pour les Batwa; Lawyers' Association for the Human Rights of Nepal's Indigenous Peoples (LAHURNIP); Association of Kolski Saamis; Association of Russian-language indigenous people of Latvia; (Russian) Association of Small Indigenous Peoples of the North; Association on American Indian Affairs; Association Oyiwane; Association pour l'Intégration des Peuples Autochtones; Association Racines; Association Shoria; Bharat Munda Samaj; Bunong Association for a Good Future; Bureau of Consultation for West Papua Indigenous Community Development; Cabildo Indígena del Resguardo Kankuamo; Canadian Friends Service Committee; Centre for First Nations Governance; Centre for Support of Indigenous Peoples of the North (CSIPN); Centro de Estudios e Investigaciones Mapuche; Chippewas of the Thames First Nation; Comisión de Asuntos Indígenas - Congreso de la Unión de México; Comisión de Juristas Indígenas en la República Argentina; Communauté des Potiers du Rwanda; Comunidad Indígena del Pueblo Tupi Guarani "Cacique Hipolito Yumbay"; Congrès populaire Coutumier Kanak; Consejo de todas las Tierras; Consejo Indio de Sud America; Consejo Regional Indígena del Tolima (CRIT); Coordinadora de Organizaciones Indígenas de Amazonia (COICA); Coordinadora Andina de las Organizaciones Indígenas de la Cuenca del Amazonas (CAOI); Cultura de Solidaridad Afro-Indígena; Cultural and Development Society; Cultural Survival; Dewan Adat Papua; Drumbeat Media; Endorois Welfare Council; Enlace Continental de Mujeres Indígenas; Association Espoir pour les Jeunes Batwa; Federación Indígena Empresarial y Comunidades Locales de Mexico (CIELO); Federation of American Women's Clubs Overseas; Friends World Committee for Consultation (Quakers); First Nations Summit; Fundación Paso a Paso; Grand Council of the Crees; Herri-Topa (Rencontre entre les peuples); Human Rights Advocates; Human Rights Institute; IDU Mishmi Cultural and Literary Society; Il'laramatak Community Concerns; Ilukim Sustainability Solomon Islands; Incomindios; Indian Law Resource Center; Indigenous Information Network; Indigenous Movement; Indigenous Peoples and Nations Coalition; Indigenous Peoples' Center for Documentation, Research and Information (DOCIP); Indigenous Peoples of Africa Coordinating Committee (IPACC); Indigenous Women and Children Foundation; Indigenous World Association; International Indian Treaty Council (IITC); International Work Group for Indigenous Affairs (IWGIA); Internationale Touarègue; Inter-regional public movement of Komi Peoples – "Komi Voytyr"; Inuit Circumpolar Council; Inuit Tapiriit Kanatami; Jaringan Orang Asal SeMalaysia (The Indigenous People Network of Malaysia - JOAS); Kapaeeng Foundation; Karbi Human Rights Watch; Kariros; Kera - an Initiative for Cultural and Ecological Security (KICES); Khmers Kampuchea Krom Federation; Laguna-Acoma Coalition for a Safe Environment; MADALAH (Making a Difference and Looking Ahead); Maloca Internationale (MAIN); Massai Experience; Monitoring Mechanism of the National Iwi Chairs Forum; Movement for the Survival of the Ogoni People (MOSOP); Movimiento Indígena de Nicaragua; Mujeres Mayas Majawil Q'ij; Naga People's Movement for Human Rights; Na Jaqna Conservancy and Community Forest; National Alliance of Indigenous Peoples in the Philippines (Kalipunan Ng Katutubong Mamamayan Ng Pilipinas - KATRIBU); National Congress of American Indians; National Congress of Australia's First Peoples; National Indian Youth Council; Native American Rights Fund; Nepal Laborious Society Centre; Nepal Thami Society; Nisga'a Lisims Government; Ochapowace Nation; Organización de Mujeres Guatemaltecas "Mama Maquin"; Organisation des Nations Autochtones de Guyane; Organizacion Nación

Purhepecha Zapatista Michoacán; Organización de Jóvenes Indígenas de la región Ucayali (OJIRU); Organización Nacional Indígena de Colombia (ONIC); Organizacion Social Ngäbe-Buglé para el Desarrollo Humano Integral; Pikhumpogan Dlibon Subanen; Porgera Landowners Association; Programme Intégré pour le Développement du peuple Pygmée au Kivu (PIDP); Rehoboth Community of Namibia; Réseau de peuples autochtones d'Afrique; Saami Council; Sami Parliament of Norway; SAMUSA (Network of Indigenous Organisations in Cameroon); Saniri Alifuru (Alifuru Council); Social Economic and Governance Promotion Centre; Solidarité pour la Promotion des Femmes Autochtones; Tebtebba Foundation; Teemashane Community Development Trust; Tehue Manu Community – Maori Rapa Nui; The Hopi Tribe Nation; Tin Hinane; Union of British Columbia Indian Chiefs; Unión Wixárika de Centros Ceremoniales de Jalisco, Durango y Nayarit; Voices for Peace; World Barua Organization; World Uyghur Congress; World Indigenous Tourism Alliance; Youth Public Movement of Mordovian People.

Annex II

Provisional agenda of the ninth session

1. Election of officers.
2. Adoption of the agenda and organization of work.
3. Follow-up to the World Conference on Indigenous Peoples, including the review of the mandate of the Expert Mechanism.
4. Panel discussion on the promotion and protection of the rights of indigenous persons with disabilities.
5. Human rights of indigenous peoples in relation to business enterprises.
6. Thematic study and advice to be prepared pursuant to the forthcoming resolution of the Human Rights Council on human rights and indigenous peoples.
7. United Nations Declaration on the Rights of Indigenous Peoples.
8. Follow-up on thematic studies and advice.
9. Proposals to be submitted to the Human Rights Council for its consideration and approval.
10. Adoption of the report.

United Nations

A/HRC/30/53

General Assembly

Distr.: General
19 August 2015

Original: English

Human Rights Council
Thirtieth session
Agenda item 5
Human rights bodies and mechanisms

Promotion and protection of the rights of indigenous peoples with respect to their cultural heritage

Study by the Expert Mechanism on the Rights of Indigenous Peoples

Summary

In its resolution 27/13, the Human Rights Council requested the Expert Mechanism on the Rights of Indigenous Peoples to prepare a study on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage, including through their participation in political and public life, and to present it to the Council at its thirtieth session.

The present study offers a comprehensive analytical overview of the international legal framework and jurisprudence regarding the rights of indigenous peoples with respect to their cultural heritage, and addresses some of the specific issues for indigenous peoples when it comes to cultural heritage.

The study concludes with Expert Mechanism advice No. 8 on the cultural heritage of indigenous peoples.

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I. Introduction

1. In its resolution 27/13, the Human Rights Council requested the Expert Mechanism on the Rights of Indigenous Peoples to prepare a study on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage, including through their participation in political and public life, and to present it to the Council at its thirtieth session.

2. The Expert Mechanism called for submissions from States, indigenous peoples, non-State actors, national human rights institutions and other stakeholders to inform the study. The submissions received are, where permitted, available on the website of the Expert Mechanism.[1] The study also benefited significantly from presentations made at the Expert Seminar on Indigenous Peoples' Rights with Respect to their Cultural Heritage (Rovaniemi, Finland, 26 and 27 February 2015), organized by the Office of the United Nations High Commissioner for Human Rights and the University of Lapland. The Expert Mechanism appreciates the submissions and is informed by them.

3. Although the Expert Mechanism has not specifically addressed the issue of cultural heritage, it has given significant attention to the cultures of indigenous peoples (A/HRC/21/53). The present study offers a comprehensive overview of the international legal framework and jurisprudence regarding the rights of indigenous peoples with respect to their cultural heritage and addresses specific aspects of those rights.

A. Concept of cultural heritage

4. The term "cultural heritage" has evolved considerably in recent decades. While previously referring exclusively to the monumental remains of cultures, "cultural heritage" has gradually come to include new categories; in particular, more emphasis has been put on intangible cultural heritage. The 2003 Convention for the Safeguarding of the Intangible Cultural Heritage defines intangible cultural heritage as "the practices, representations, expressions, knowledge, skills — as well as the instruments, objects, artefacts and cultural spaces associated therewith — that communities, groups and, in some cases, individuals recognize as part of their cultural heritage" (art. 2). There is also increasing recognition of the relationship between communities and cultural heritage. The Council of Europe Framework Convention on the Value of Cultural Heritage for Society defines cultural heritage as "a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge and traditions. It includes all aspects of the environment resulting from the interaction between people and places through time" (art. 2).

5. As noted by the Special Rapporteur in the field of cultural rights, although no uniform definition exists, several international instruments and a number of references relating to traditional knowledge and traditional cultural expressions provide useful guidance for defining what is usually understood as cultural heritage. Noting that no list is exhaustive, the Special Rapporteur referred to cultural heritage as "tangible heritage (e.g. sites, structures and remains of archaeological, historical, religious, cultural or aesthetic value), intangible heritage (e.g. traditions, customs and practices, aesthetic and spiritual beliefs; vernacular or other languages; artistic expressions, folklore) and natural heritage (e.g. protected natural reserves; other protected biologically diverse areas; historic parks and gardens and cultural landscapes)" (A/HRC/17/38 and Corr.1, para. 4). She added that

[1] See www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/Studyonculturalheritage.aspx.

cultural heritage should be understood as resources enabling the cultural identification and development processes of individuals and communities which they, implicitly or explicitly, wish to transmit to future generations (ibid., para. 6). Cultural heritage also includes traditional knowledge and cultural expressions.

B. Indigenous peoples and cultural heritage

6. Indigenous peoples' cultural heritage includes tangible and intangible manifestations of their ways of life, world views, achievements and creativity, and should be considered an expression of their self-determination and their spiritual and physical relationships with their lands, territories and resources. While the notion of heritage encompasses traditional practices in a broad sense, including language, art, music, dance, song, stories, sports and traditional games, sacred sites, and ancestral human remains, for indigenous peoples the preservation of heritage is deeply embedded and linked to the protection of traditional territories. Indigenous cultural heritage is a holistic and inter-generational concept based on common material and spiritual values influenced by the environment.[2] It also includes bio-cultural heritage and traditional food production systems such as rotational farming, pastoralism, artisanal fisheries and other forms of access to natural sources.[3]

7. Taking into account the various understandings of culture and cultural heritage, the Expert Mechanism proposed the following:

> Indigenous peoples' cultures include tangible and intangible manifestations of their ways of life, achievements and creativity, and are an expression of their self-determination and of their spiritual and physical relationships with their lands, territories and resources. Indigenous culture is a holistic concept based on common material and spiritual values and includes distinctive manifestations in language, spirituality, membership, arts, literature, traditional knowledge, customs, rituals, ceremonies, methods of production, festive events, music, sports and traditional games, behaviour, habits, tools, shelter, clothing, economic activities, morals, value systems, cosmovisions, laws, and activities such as hunting, fishing, trapping and gathering. (A/HRC/21/53, para. 52)

8. It is important to acknowledge that the traditional categorization of heritage as "tangible", "intangible", and "natural" demonstrates its limitations: tangible heritage carries out meanings, while intangible heritage is often embodied in specific objects. This categorization is particularly inappropriate in the case of indigenous peoples. It is important to adopt a holistic approach to cultural heritage and acknowledge that the rigid legal regime of protection for cultural heritage could be problematic for indigenous peoples.

II. Review of the international legal framework on the rights of indigenous peoples with respect to their cultural heritage

9. Standards relating to the cultural heritage of indigenous peoples are dispersed in several international regimes, in particular in human rights instruments, United Nations Educational, Scientific and Cultural Organization (UNESCO) instruments, intellectual property treaties and the international environmental law and policy regime.

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[2] See the submission from the Asia Indigenous Peoples' Pact.
[3] See the submission from the International Indian Treaty Council.

A. Human rights instruments

10. Culture is one of the underlying pillars of the United Nations Declaration on the Rights of Indigenous Peoples. The close relationship between the cultural rights of indigenous peoples and their right to self-determination is reflected in article 3 of the Declaration, which states that by virtue of their right to self-determination, indigenous peoples may freely pursue their cultural development. The Declaration addresses the tangible heritage, traditions and customs of indigenous peoples (art. 11); the spiritual and religious traditions and customs of indigenous cultures (art. 12); their intangible heritage (art. 13); and their right to uphold the dignity and diversity of their cultures and languages, in relation to education and public information (arts. 14 and 15). More specifically, regarding cultural heritage, the Declaration states that:

> Indigenous peoples have the right to maintain, control protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions. (art. 31)

11. The Declaration upholds the rights of indigenous peoples to develop their own cultures and customs, to the use and control of their ceremonial objects, not to be subjected to destruction of their cultures or to discrimination on cultural grounds, and to redress mechanisms for action that deprives them of their cultural values.

12. The International Labour Organization Indigenous and Tribal Peoples Convention (No. 169) contains a number of provisions relating to the cultural heritage of indigenous peoples. Drawing attention to the distinctive contributions of indigenous peoples to the cultural diversity of humankind (preamble), the Convention requires Governments to promote and safeguard the cultures of indigenous peoples through special measures (arts. 2 and 4), and to recognize and protect their cultural values and practices (art. 5). Governments are required to respect and safeguard the cultural and traditional values of indigenous peoples and (art. 13) their use and management of the land and natural resources (arts. 14 and 15), and ensure that the traditional activities of indigenous peoples are strengthened and promoted (art. 23). Governments are required to consult with and ensure the effective participation of indigenous peoples at all levels of decision-making in political, legislative and administrative bodies and processes which may affect them directly, including their cultural development, and ensure that studies are carried out to assess, inter alia, the cultural impact of development activities on indigenous peoples (arts. 6 and 7).

13. The right of access to and enjoyment of cultural heritage forms part of international human rights law (A/HRC/17/38, para. 78). A number of international human rights instruments provide the legal basis for the right of access to and enjoyment of cultural heritage, including the Universal Declaration of Human Rights (art. 27), the International Covenant on Economic, Social and Cultural Rights (art. 15) and the International Covenant on Civil and Political Rights (art. 27). The obligation to respect the right to take part in cultural life "includes the adoption of specific measures aimed at achieving respect for the

right of everyone, individually or in association with others or within a community or group … to have access to their own cultural and linguistic heritage and to that of others."[4]

14. The International Covenant on Civil and Political Rights provides for the right of members of minorities to enjoy their own culture, practice their own religion and use their own language (art. 27), while the Convention on the Rights of the Child explicitly extends that right to persons of indigenous origin (art. 30) and requires that the education of the child be directed to "the development of respect for his or her cultural identity, language and values…" (art. 29).

15. At the regional level, the African Charter on Human and Peoples' Rights guarantees the right of every individual to freely take part in the cultural life of his or her community (art. 17) and upholds the right of all peoples to their cultural development and the equal enjoyment of the common heritage of mankind (art. 22). The American Declaration of the Rights and Duties of Man proclaims the right of every person to take part in the cultural life of the community (art. 13).

16. Overall, international and regional human rights instruments guarantee the right to take part in cultural life, the right to enjoy one's own culture, and the right to maintain, control, protect and develop one's cultural heritage.

B. United Nations Educational, Scientific and Cultural Organization, cultural heritage and indigenous peoples

17. Cultural heritage is a central part of the mandate of UNESCO. The 1972 Convention concerning the Protection of the World Cultural and Natural Heritage (the World Heritage Convention), addresses both cultural heritage (e.g. sacred sites, monuments or buildings) and natural heritage (e.g. biodiversity hotspots or outstanding geological formations).

18. More recent instruments provide greater recognition of the cultural heritage of indigenous peoples. The Universal Declaration on Cultural Diversity (2001) protects the exchange of cultural heritage, calling specifically for respect for human dignity and commitment to the human rights of minorities and indigenous peoples as a key element to defend cultural diversity (art. 4). The 2003 Convention on the Safeguarding of Intangible Cultural Heritage recognizes that "communities, in particular indigenous communities, groups and, in some cases, individuals, play an important role in the production, safeguarding, maintenance and re-creation of the intangible cultural heritage" (preamble). The Operational Directives for the implementation of the Convention emphasize that State activities may only be undertaken with the active involvement or participation of the concerned communities, groups and individuals. In particular, the free, prior and informed consent of the concerned communities is required to inscribe intangible cultural heritage elements on the List of Intangible Cultural Heritage in Need of Urgent Safeguarding or the Representative List of the Intangible Cultural Heritage of Humanity and to include programmes, projects or activities in the register of best practices (paras. 1, 2, 7 and 101).

19. The 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions refers to the State obligation to pay "due attention" to creating an environment conducive to enabling indigenous peoples to create, produce, disseminate and access their cultural heritage through their cultural expressions (art. 7 (a)).

[4] Committee on Economic, Social and Cultural Rights, general comment No. 21 (2009), para. 50.

C. Convention on Biological Diversity and Nagoya Protocol

20. The 1992 Convention on Biological Diversity promotes protection of the natural and cultural heritage of indigenous peoples through the conservation of biological diversity and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources (arts. 1 and 19). It requires States to "respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity … and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices" (art. 8 (j)). The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (2010) is particularly relevant as it requires States to uphold the established rights and customary laws of indigenous peoples and ensure their participation in the implementation of the Protocol (arts. 5 and 12). The Protocol protects access to indigenous cultural heritage by requiring States to take measures to obtain the prior informed consent and involvement of indigenous communities for access to relevant genetic resources (art. 6) and traditional knowledge (art. 7).

21. The Food and Agricultural Organization of the United Nations International Treaty on Plant Genetic Resources for Food and Agriculture, recognizing the enormous contribution of indigenous communities to food production worldwide, requires the Contracting parties to take measures to protect traditional knowledge relevant to plant genetic resources for food and agriculture (art. 9) and promote wild crops and plants by supporting the efforts of indigenous communities (art. 5).

D. World Intellectual Property Organization

22. The World Intellectual Property Organization (WIPO) has three conventions that are particularly relevant to the cultural heritage of indigenous peoples. The Berne Convention for the Protection of Literary and Artistic Works (1886) provides a mechanism to ensure international protection of anonymous, pseudonymous and unpublished works, including traditional cultural expressions (art. 15); the WIPO Performances and Phonograms Treaty (1996) provides for international protection for performances and phonographic recordings of expressions of folklore (arts. 2 and 33); and the Beijing Treaty on Audiovisual Performances (2012), which, upon entry into force, will provide protection to performers of expressions of folklore with regard to authorizing their performances in audiovisual media.

23. In 2000, WIPO members established an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore to serve as a forum to discuss intellectual property issues arising in the context of access to genetic resources and benefit-sharing, and protection of traditional knowledge and traditional cultural expressions. In 2009, the Committee initiated formal text-based negotiations with the objective of reaching agreement on texts of international legal instruments to ensure the effective protection of genetic resources, traditional knowledge and traditional cultural expressions.

24. Although a multitude of legal regimes exist to protect cultural heritage, there is a lack of adequate integration of protections for indigenous peoples. Such complex and parallel systems of protection of cultural heritage leads to fragmentation within a multitude of legal frameworks, which ultimately do not adequately protect the cultural heritage of indigenous peoples. The systems fail to recognize that, for indigenous peoples, cultural heritage is holistic and encompasses their spiritual, economic and social connections to their lands and territories.

III. Overview of the jurisprudence on rights relating to cultural heritage

A. Human rights treaty bodies

25. Article 27 of the International Covenant on Civil and Political Rights protects the cultural rights of indigenous peoples. In its general comment No. 23 (1994), the Human Rights Committee observed that "culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples" (para. 7). With regard to the relationship between land and cultural rights, the approach is that, where land is of central significance to the sustenance of a culture, the right to enjoy one's culture requires the protection of land[5] and the recognition of land rights for indigenous peoples, as reiterated in several concluding observations and individual communications of the Committee. Avoiding the danger of adopting an overly rigid or "frozen" approach to the definition of cultural activities, the Committee has consistently underlined that indigenous peoples who have adapted their methods of carrying out traditional activities over the years and have incorporated the use of modern technology are not prevented from invoking protection under the Covenant.[6]

26. The Committee on Economic, Social and Cultural Rights has been particularly proactive in recognizing the cultural rights of indigenous peoples.[7] In its general comment No. 21, the Committee noted that:

> Indigenous peoples have the right to act collectively to ensure respect for their right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literature, designs, sports and traditional games, and visual and performing arts. (para. 37)

27. The Committee has also expressed concern about the lack of adequate protection for and information on the intellectual property rights and cultural heritage of indigenous peoples (E/C.12/RUS/CO/5, para. 34) and the restrictions to land and resources and the lack of involvement of indigenous peoples in decision-making processes regarding land rights, which pose a threat to the realization of their cultural life (E/C.12/TZA/CO/1-3, para. 29).

28. The Committee on the Elimination of Racial Discrimination made a direct connection between the cultural rights and land rights of indigenous peoples, and between their language and cultural heritage.[8] It recommended that States parties respect indigenous culture, history, language and way of life as an enrichment of the State's cultural identity (CERD/C/IDN/CO/3, para. 16).

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[5] Jeremie Gilbert, *Indigenous Peoples' Land Rights under International Law: From Victims to Actors* (Ardsley, New York, Transnational Publishers Inc., 2006), p. 115.

[6] See, for example, Human Rights Committee, communication No. 511/1992, *Länsman et al. v. Finland*, Views adopted on 26 October 1994, para. 9.3.

[7] See the Committee's general comments No. 17 (2005) and No. 21 (2009).

[8] Committee on the Elimination of Racial Discrimination, general recommendation No. 23 (1997), para. 3.

B. Special procedures of the Human Rights Council

29. The Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Erica-Irene Daes, conducted studies on the protection of the cultural and intellectual property of indigenous peoples (E/CN.4/Sub.2/1993/28) and on the protection of the heritage of indigenous peoples (E/CN.4/Sub.2/1995/26). The studies considered measures to strengthen respect for the cultural and intellectual property of indigenous peoples, and included the draft principles and guidelines for the protection of the heritage of indigenous peoples (E/CN.4/Sub.2/1995/26, annex), which set standards for governments to ensure that the heritage of indigenous peoples survives for future generations and continues to enrich the common heritage of humanity.

30. The Special Rapporteur in the field of cultural rights has made recommendations on the right of access to and enjoyment of cultural heritage for all persons, which are relevant to indigenous peoples (A/HRC/17/38). She underlined the need to build stronger relationships between cultural institutions and communities, including indigenous peoples, and to develop good practices (para. 16).

31. The Special Rapporteur on the rights of indigenous peoples has consistently addressed the issue of cultural heritage in thematic and country reports, documenting instances where indigenous peoples have had major concerns regarding the protection of their cultural heritage, such as the endangerment of their sacred places, heritage languages and cultures (A/HRC/21/47/Add.1, appendix II, para. 107), and the lack of control by indigenous peoples to establish their historical cultural heritage sites (A/HRC/15/37/Add.5, para. 64). The Special Rapporteur has highlighted how the cultural heritage of indigenous peoples could be put in jeopardy when extractive industries or large-scale developmental projects invade indigenous peoples' territories,[9] and the importance of education, particularly the role of indigenous languages, in the preservation of cultural heritage.[10] In particular, the Special Rapporteur has drawn attention to the lack of inclusion and participation of indigenous peoples in the nomination and management of world heritage sites under the World Heritage Convention (A/67/301, paras. 33–42).

C. Regional human rights institutions

32. Regional courts and human rights commissions have lent robust support to the rights of indigenous peoples to their cultural heritage. The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have firmly established that States should create effective mechanisms for titling and demarcating the lands, territories and resources of indigenous peoples in accordance with their customs, cultures and traditions.[11] The Court has emphasized that the close relationship between indigenous peoples and their land must be recognized and understood as the fundamental base of their culture, spiritual life, integrity, economic survival and cultural preservation.[12]

33. The African Commission on Human and Peoples' Rights has also examined the right to cultural heritage as it applies to indigenous peoples. In the Endorois decision, the

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[9] A/HRC/21/47/Add.3, para. 69; A/HRC/18/35/Add.1, para. 10; A/HRC/15/37/Add.1, para. 242.

[10] E/CN.4/2005/88/Add.4, paras. 10 and 17; E/CN.4/2006/78/Add.4, para. 26; A/HRC/4/32/Add.4, para. 33.

[11] Inter-American Court of Human Rights, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, judgement of 31 August 2001 (Series C, No. 79), para. 153.

[12] Inter-American Court of Human Rights, *Yakye Axa Indigenous Community v. Paraguay*, judgement of 17 June 2005 (Series C, No. 125), para. 131.

Commission highlighted that article 17 of the Charter was dual dimensional in both its individual and collective nature, protecting, on the one hand, individuals' participation in the cultural life of their community and, on the other hand, obliging the State to promote and protect the traditional values recognized by a community.[13] It added that article 17 required governments to take measures aimed at the conservation, development and diffusion of culture, such as promoting awareness and enjoyment of the cultural heritage of national ethnic groups and minorities and of indigenous sectors of the population.[14]

IV. Participation of indigenous peoples in cultural heritage policies

34. Effective participation in decision-making processes relating to cultural heritage is crucial for indigenous peoples, who are often the victims of both cultural and natural heritage protection policies that fail to take their rights and perspectives into consideration.

35. The rights to effective participation, consultation and consent are strongly expressed in several articles of the United Nations Declaration on the Rights of Indigenous Peoples. Article 32 requires States to consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. This provision relates to any decisions that would affect the lands and territories of indigenous peoples, including the classification of their lands as cultural or natural heritage sites.

36. Free, prior and informed consent is a key element of human rights jurisprudence. The Committee on Economic, Social and Cultural Rights calls on States to "respect the principle of free, prior and informed consent of indigenous peoples in all matters covered by their specific rights",[15] and has also put great emphasis on such consent in the context of their cultural heritage (E/C.12/TZA/CO/1-3, para. 29). The Human Rights Committee, in several concluding observations, has highlighted that it is essential for States to ensure the participation of indigenous peoples in decision-making processes that would affect their cultural rights, stressing the need to seek their consent on all matters affecting them (CCPR/C/PAN/CO/3, para. 21; CCPR/C/KEN/CO/3, para. 24).

37. The Special Rapporteur in the field of cultural rights has underlined that the participation of individuals and communities in cultural heritage matters is crucial and that, the power differentials that exist between, as well as within, communities must be taken into consideration, as they impact the ability of individuals and groups to effectively contribute to the identification, development and interpretation of what should be considered as a common "culture" or shared cultural heritage. She considered that it was also important to fully respect the freedom of individuals to participate or not in one or several communities, to develop their multiple identities, to access their cultural heritage as well as that of others, and to contribute to the creation of culture, including through the contestation of dominant norms and values within the communities they belong to as well as those of other communities (A/HRC/17/38 and Corr.1, para. 10). In this respect, particular attention should be paid to the position of women within indigenous

[13] African Commission on Human and Peoples' Rights, *Centre for Minority Rights Development and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, 276/2003 (2010), para. 241.

[14] Ibid., para. 246.

[15] See the Committee's general comment No. 21 (2009), para. 37.

communities, and States should ensure that diverse women's voices within specific communities are heard and that their human rights are not sacrificed in the name of culture (A/67/287, para. 80).

A. Participation at the international level

38. Since the adoption of the Declaration, there have been repeated complaints by indigenous peoples and human rights organizations about violations of the rights of indigenous peoples in the implementation of the World Heritage Convention.[16] There is no procedure to ensure the participation of indigenous peoples in the nomination and management of World Heritage sites nor is there a policy to ensure their free, prior and informed consent to the nomination of such sites.[17] Both the Permanent Forum on Indigenous Issues and the Expert Mechanism have emphasized the importance of obtaining the free, prior and informed consent of indigenous peoples with regard to territories proposed for nomination and inscription as World Heritage sites. The Expert Mechanism also noted that "robust procedures and mechanisms should be established to ensure indigenous peoples are adequately consulted and involved in the management and protection of World Heritage sites" (A/HRC/18/42, annex, para. 38).

39. The Special Rapporteur in the field of cultural rights recommended that States seek the free, prior and informed consent of source communities before adopting measures concerning their specific cultural heritage, in particular in the case of indigenous peoples, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples. She specifically emphasized that no inscription on UNESCO lists relating to cultural heritage or national lists or registers should be requested or granted without the free, prior and informed consent of the communities concerned (A/HRC/17/38 and Corr.1, para. 80).

40. In 2011, the African Commission on Human and Peoples' Rights adopted a resolution condemning the inscription of Lake Bogoria National Reserve in Kenya on the World Heritage List, as the World Heritage Committee had failed to respect the rights of the Endorois community.[18] In the resolution, the African Commission noted that many sites "have been inscribed without the free, prior and informed consent of the indigenous peoples in whose territories they are located and whose management frameworks are not consistent with the principles of the UN Declaration on the Rights of Indigenous Peoples". The resolution drew attention to the general lack of respect for the rights of indigenous peoples in the context of nomination of World Heritage sites.

41. The International Union for the Conservation of Nature World Conservation Congress adopted a resolution calling on the World Heritage Committee to review and revise its procedures in consultation with indigenous peoples to ensure that their rights are upheld and implemented in the management and protection of existing World Heritage sites. The aim of the resolution is to make the decision-making process consistent with the Declaration on the Rights of Indigenous Peoples and to ensure that no World Heritage sites

[16] E/2010/43-E/C.19/2010/15, para. 131, A/HRC/18/42, annex, para. 38, and letter from the Special Rapporteur on the rights of indigenous peoples to the Director of the World Heritage Centre (A/HRC/25/74, p. 127).

[17] "World Heritage and Indigenous Peoples — A Call to Action", Report of the International Expert Workshop on the World Heritage Convention and Indigenous Peoples (Copenhagen, 20 and 21 September 2012), p. 60.

[18] Resolution No. 197 on Protection of Indigenous Peoples' Rights in the Context of the World Heritage Convention and the Designation of Lake Bogoria as a World Heritage site.

are established in the territories of indigenous peoples without their free, prior and informed consent.[19]

42. International Finance Corporation performance standard 7 on indigenous peoples states that "where a project may significantly impact on critical cultural heritage that is essential to the identity and/or cultural, ceremonial, or spiritual aspects of Indigenous Peoples' lives, priority will be given to the avoidance of such impacts. Where significant project impacts on critical cultural heritage are unavoidable, the client will obtain the FPIC of the Affected Communities of Indigenous Peoples" (para. 16). The adoption of this standard by a corporation that supports investments globally is significant and indicates that human rights obligations are not limited to the public sector. Nonetheless, it has been widely observed that the requirements of participation and consultation, and in particular the requirement to obtain the free, prior and informed consent of indigenous peoples, are not yet properly implemented and respected at the international level.

43. Some questions have also been raised with regard to the rights of women in the implementation of the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage. The Special Rapporteur in the field of cultural rights stressed that article 13 (d) (ii) of the Convention, according to which access to cultural heritage should be ensured "while respecting customary practices governing access to specific aspects of such heritage", cannot be interpreted as permitting gender-based discrimination. Distinctions must not lead to indirect or structural discrimination against women and girls (A/67/287, para. 63).

44. Since its inception, the WIPO Intergovernmental Committee has been trying to support an inclusive approach to promote the direct involvement of all stakeholders, especially indigenous peoples and local communities. During all its sessions, indigenous peoples may intervene on any issue on the agenda and make draft proposals, which could be incorporated into the text under discussion if supported by at least one member State. In 2005, the WIPO General Assembly established a voluntary fund to facilitate the participation of accredited indigenous peoples and local communities. Through this mechanism, representatives of more than 80 indigenous peoples and local communities worldwide have received funding to participate in sessions of the Intergovernmental Committee.

B. Participation at the national level

45. In its general comment No. 21, the Committee on Economic, Social and Cultural Rights emphasized that States had an obligation to allow and encourage the participation of indigenous peoples in the design and implementation of laws and policies that affect them.[20] In particular, States parties should obtain their free, prior and informed consent when the preservation of cultural resources, especially those associated with their way of life and cultural expression, are at risk. This includes decisions to classify their territories under the label of Cultural or Natural Heritage Sites.

46. The Special Rapporteur in the field of cultural rights has stressed that concerned communities and individuals should be consulted and be able to actively participate in the process of identification, selection, classification, interpretation, preservation/safeguard, stewardship and development of cultural heritage. Furthermore, States have the duty not to

[19] Resolution WCC-2012-Res-047 on Implementation of the United Nations Declaration on the Rights of Indigenous Peoples in the context of the UNESCO World Heritage Convention.

[20] See the Committee's general comment No. 21 (2009), para. 55 (e).

destroy, damage or alter cultural heritage, at least not without the free, prior and informed consent of concerned communities, and to take measures to preserve/safeguard cultural heritage from destruction or damage by third parties (A/HRC/17/38, para. 80 (b) and (c)).

47. Indigenous peoples in Canada are actively involved in the protection of their cultural heritage and have been supported by formal legislation in this area. For example, the Province of British Columbia enacted the Heritage Conservation Act of 1996, which was created in order "to encourage and facilitate the protection and conservation of heritage property in British Columbia." This includes ensuring that indigenous peoples are consulted on the status of cultural heritage sites and objects within their traditional lands and territories. Another positive example is the recent nomination of Pimachiowin Aki as a World Heritage site, a joint effort of two Canadian provinces and the First Nations affected.[21]

48. The Australian National Committee of the International Council on Monuments and Sites adopted the Burra Charter for Places of Cultural Significance (2013) as a best practice cultural heritage conservation and management guide. The conservation principles set out in the Burra Charter form the basis for management of all places of cultural significance in Australia. The Charter establishes appropriate decision-making procedures and ensures the participation of cultural groups affected by the decisions.[22]

49. The 2012 Free, Prior and Informed Consent Guidelines of the National Commission on Indigenous Peoples of the Philippines mentions sacred grounds, burial sites and cultural and heritage sites as areas excluded for any activity except for exclusive purposes where they are identified. However, it seems that its implementation remains a huge challenge, owing to the manipulation of the process by interested parties.[23]

50. The indigenous peoples of the States of the Caribbean Community (CARICOM) participated in the creation of a draft CARICOM regional framework, which seeks to establish a regional instrument for the protection of genetic resources, traditional knowledge and traditional cultural expressions, while ensuring the free, prior and informed consent of the rightful owners/holders/beneficiaries on mutually agreed terms and with fair and equitable benefit-sharing.[24]

51. While there are some good practices emerging at the national level, there are still many instances where indigenous peoples have not been allowed to participate in decision-making processes that affect their cultural heritage.[25] In 2011, for example, the Western Ghats (India) and the Sangha Trinational (Congo/Cameroon/Central African Republic) were inscribed as natural World Heritage sites, despite the fact that in both situations, serious objections were raised about the lack of any meaningful participation of indigenous peoples living in the respective areas. In both cases, there was a blatant lack of respect for the free, prior and informed consent of the concerned communities, as the affected

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[21] See the submission from the International Work Group on Indigenous Affairs and the Forest Peoples Programme.

[22] See the submission from Australia.

[23] See the submission from the Asia Indigenous Peoples Pact.

[24] See the submission from the Aldet Centre-Saint Lucia.

[25] S. Disko and H. Tugendhat (eds.), *World Heritage Sites and Indigenous Peoples' Rights* (International Work Group for Indigenous Affairs, Forest Peoples Programme and Gundjeihmi Aboriginal Corporation, document No. 129, 2014).

indigenous peoples had not even seen the submitted nomination documents, which had not been made publicly available.[26]

V. Specific issues relating to the rights of indigenous peoples with respect to their cultural heritage

A. Lands, territories and cultural heritage

52. Access to and use of lands, territories and the environment are essential elements of cultural heritage for many indigenous peoples. The connection between land rights and cultural heritage is strongly embedded in international legal instruments and in international jurisprudence. Many human rights institutions have highlighted that ownership, control and management of their ancestral territories constitutes an essential element of the cultural heritage of indigenous peoples.[27] The Committee on Economic, Social and Cultural Rights calls on States to "respect the rights of indigenous peoples to their culture and heritage and to maintain and strengthen their spiritual relationship with their ancestral lands and other natural resources traditionally owned, occupied or used by them, and indispensable to their cultural life."[28]

53. Both the African Commission on Human and Peoples' Rights and the Inter-American Court of Human Rights have given prominence to the importance of land and territorial rights in their decisions, emphasizing that land rights constitute a foundation for the cultural integrity of indigenous peoples, including their rights to culture, religion, health, development and natural resources.[29] Both recognize the spiritual value that indigenous peoples attach to their territories as part of their cultural heritage. The protection of sacred sites is a key element of indigenous peoples' territorial rights, and therefore of their cultural heritage.

54. Lack of recognition of indigenous peoples' land rights and their relationships with their territories negatively affects their right to enjoy, access and promote their cultural heritage. As such, no policy or legislation can adequately address the cultural heritage of indigenous peoples without recognizing their fundamental rights to their lands and territories.

55. The establishment of World Heritage sites, or other forms of protected areas can have a negative impact on indigenous peoples because, often, their ancestral rights over their lands and territories are not respected or protected. In many nature-protected areas, including areas inscribed on the World Heritage List, narrow restrictions are imposed on traditional practices and activities, such as hunting, gathering, farming or animal husbandry, in violation of the cultural and subsistence rights of indigenous peoples. To be included on the World Heritage List, sites must be of "outstanding universal value", a concept which can lead to management frameworks that prioritize the protection of those heritage aspects

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[26] Joint statement on continuous violations of the principle of free, prior and informed consent in the context of UNESCO's World Heritage Convention, endorsed by over 70 indigenous organizations and NGOs, submitted to the World Heritage Committee in May 2011.

[27] Jeremie Gilbert, "Indigenous peoples' heritage and human rights", S. Disko and H. Tugendhat (eds.), *World Heritage Sites and Indigenous Peoples' Rights* (see footnote 25 above).

[28] General comment No. 21 (2009), para. 49 (d).

[29] Inter-American Court of Human Rights, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, para. 149; and African Commission on Human and Peoples' Rights, *Centre for Minority Rights Development and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, para. 16.

at the expense of the land rights of indigenous peoples. As a result, the protection of world heritage can undermine indigenous peoples' relationship with their traditional lands, territories and resources, as well as their livelihoods and cultural heritage, especially in sites where the natural values are deemed to be of outstanding universal value but the cultural values of indigenous peoples are not taken into account.

56. Non-State actors who invade indigenous peoples' territories often negatively impact the fundamental connection between land rights and cultural heritage. Extractive industries and other business can result in profound and often irreversible damage to the cultural heritage of indigenous peoples. There is an urgent need to protect indigenous natural heritage from the operations of extractive industries and to recognize indigenous peoples' substantive rights to self-determination.

B. Traditional knowledge, intellectual property and cultural heritage

57. Traditional knowledge can be understood as a living body of knowledge that is developed, sustained and passed on from generation to generation within a community, often forming part of its cultural and spiritual identity. It encompasses knowledge, know-how, skills, innovations and practices. Traditional knowledge also encompasses traditional cultural expressions, including dances, songs, handicrafts, designs, ceremonies, tales, or other artistic or cultural expressions. Intellectual property protection could make it possible to protect traditional remedies and indigenous crafts and music against misappropriation and enable communities to control and benefit collectively from their commercial exploitation.

58. In recent years, indigenous peoples, local communities and governments, mainly in developing countries, have demanded intellectual property protection for traditional forms of creativity and innovation. Indigenous peoples have expressed concern that existing international mechanisms to protect intellectual property are inadequate. They note that the intellectual property system focuses on protecting the intellectual property of individuals, rather than collectives, and views intellectual property as alienable, which is not consistent with indigenous peoples' laws and policies related to their knowledge (A/HRC/21/53, para. 62). Furthermore, indigenous peoples reject the "public domain" status of traditional knowledge and traditional cultural expressions and argue that it opens them up to misappropriation and misuse.

C. Tourism and cultural heritage

59. Cultural heritage has acquired enormous economic value as one of the mainstays of the tourism industry, often negatively impacting the rights of indigenous peoples. The inscription of sites on the World Heritage List is a catalyst for rapid tourism development. However, indigenous peoples rarely benefit from the often large-scale developments on their territories.

60. The Ngorongoro Conservation Area in the United Republic of Tanzania, which is classified as a World Natural Heritage site and constitutes a key tourist destination, provides very little benefit to the indigenous peoples of the area.[50] Pastoralist organizations have urged the Government to ensure that the income accruing from tourism in the area is

[50] W. Olenasha, "A World Heritage Site in the Ngorongoro Conservation Area", S. Disko and H. Tugendhat (eds.), *World Heritage Sites and Indigenous Peoples' Rights*, p. 214 (see footnote 25 above).

distributed equally. This is certainly not an isolated situation. It is essential that benefit-sharing mechanisms be established in cases of tourism development on indigenous territories.

61. Misappropriation of the cultural heritage of indigenous peoples by the tourism industry is another issue. For example, the Saami costume, a symbol of the cultural heritage of the Saami people, is misused in many ways by the tourism industry in Finland. Gift shops often sell handicrafts with Saami designs that are not produced by indigenous crafters or use traditional Saami styles and colours in products that are in no way related to Saami culture. Imitations of the Saami costume are also often misused in tourism as employees' uniforms.[31] Such misappropriation of indigenous peoples' cultural heritage by the tourism industry has detrimental effects on their identity and self-image. It is important that States monitor the tourism industry to ensure the protection of the cultural heritage of indigenous peoples.

D. Sports and traditional games

62. Sports and traditional games have been recognized as integral parts of the rights of indigenous peoples to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as affirmed in article 31 of the Declaration. This right to sports and traditional games has been explicitly recognized by the Permanent Forum on Indigenous Issues, in the report on its fourth session (E/2005/43).

63. The benefits and value of sports and traditional games, which are also alluded to in the Convention on the Rights of the Child, are an important component in ensuring that indigenous peoples are able to freely determine and pursue their cultural development as part of their right to self-determination, as set out in articles 3 and 5 of the Declaration.

64. The Mato Grosso Declaration, adopted at the Second International Sports Congress held in Cuiabá, Brazil, from 9 to 16 November 2013, called on States and governments to join indigenous peoples in partnership and mutual respect in implementing their right to self-determination through sports and traditional games as well as the manifestations of their traditional knowledge and cultural expressions (A/HRC/EMRIP/2014/CRP.2, annex, para. 2).

VI. Cultural appropriation, restitution and repatriation

A. Cultural misappropriation and interpretation

65. Many indigenous peoples are affected by the misappropriation of their cultural heritage, which may take many forms, including commodification, the use of indigenous peoples' imagery and symbols in marketing, and the misappropriation of traditional songs. A recent settlement included the requirement to recognize the indigenous composer of the Maori *haka* (tribal war dance) whenever it is used in public or commercial situations.[32]

66. Cultural misinterpretation is another issue that negatively impacts the cultural heritage of indigenous peoples. This occurs when visitor centres, interpretive signage,

[31] See the submission from the Saami Parliamentary Council of Finland, and the presentation by Pia Nuorgam, Expert Seminar on Indigenous Peoples' Rights with Respect to their Cultural Heritage, 2015.

[32] See the submission from the New Zealand Human Rights Commission.

information brochures, guided tours or audio guides on cultural or natural heritage sites do not provide correct information regarding indigenous peoples' cultural or natural heritage or do not reflect their particular interpretation of the cultural or natural heritage in question.

67. Museums are regarded as sources of education and cultural understanding. In particular, museums provide a space for displaying artefacts and objects that represent particular events and the relationship between indigenous and non-indigenous peoples. For example, the National Museum of the American Indian and the Canadian Museum for Human Rights, among others, display original copies of treaties signed between the Government of Canada, the British Crown, the Government of the United States of America and indigenous peoples. The significance of those displays is the vital role of spirituality and the cultural ceremony of treaty-making. Museums are an important space for the promotion and appreciation of indigenous cultural heritage. The Sámi Museum Siida is an example of how museums that are managed by indigenous peoples themselves play a key role in the preservation, promotion and transmission of cultural heritage.[33]

68. However, museums often contribute to the misappropriation of the cultural heritage of indigenous peoples. Many museums, both private and public, hold and display the cultural heritage of indigenous peoples without the consent of the peoples concerned. For example, the Swedish National Museum of Ethnography currently holds a ceremonial deer head (*Maaso Kovat*), a sacred item of the highest spiritual and cultural significance for the Yaqui Nation, used in the Yaqui Deer Dance ceremony. Despite many official requests for restitution, the museum authorities have refused to return the deer head.[34] Unfortunately, this is not an isolated situation. Many cultural items and human remains of indigenous peoples are held by public museums and by private collectors worldwide, without the free, prior and informed consent of the peoples concerned.

B. Restitution and repatriation

69. The right to redress and restitution where violations of the rights of indigenous peoples have occurred is a foundational element to ensuring reconciliation and the future commitment to protecting the rights of indigenous peoples. Under human rights law, there is a strong principle in favour of restitution when a violation has occurred. The Declaration affirms that "States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs" (art. 11).

70. The establishment and management of protected cultural heritage sites have often resulted in indigenous peoples' dispossession of and alienation from their traditional lands and resources. In such cases, indigenous peoples are entitled to restitution of their ancestral lands. The right to restitution of land and territories obtained without their consent constitutes a key component of indigenous peoples' rights.[35]

71. The repatriation of the cultural heritage of indigenous peoples is an important aspect of such restitution. The ancient burial grounds of many indigenous communities have been disrespected and the communities concerned have asked for the repatriation of human

[33] Presentations by Paivi Magga and Eija Ojanlatva, Expert Seminar on Indigenous Peoples' Rights with Respect to their Cultural Heritage, 2015.

[34] See the submission from the International Indian Treaty Council.

[35] Committee on the Elimination of Racial Discrimination, general recommendation No. 23 (1997), para. 5.

remains and sacred and cultural objects, whether held in private or public collections.[36] The General Assembly affirmed and recognized the importance of repatriating indigenous peoples' ceremonial objects and human remains.[37]

72. Although some potential avenues for redress or protection might exist in legal terms, notably via the International Institute for the Unification of Private Law Convention on Stolen or Illegally Exported Cultural Objects (2005), in reality it is extremely difficult for indigenous peoples to receive proper protection and reparation when their cultural heritage, particularly intangible heritage, is misappropriated. While the role of public authorities is crucial to ensuring such repatriation, the repatriation of ceremonial objects and human remains requires the cooperation of the places where the objects and remains are stored, such as museums and auction houses.

73. Some legislation and policies stipulating repatriation of indigenous peoples' cultural heritage exist. In 2011, the Australian Government adopted a policy on indigenous repatriation which facilitates the return of Aboriginal and Torres Strait Islanders' ancestral remains from overseas institutions to their communities of origin. To date, this programme has facilitated the return of over 1,400 ancestral remains and over 1,400 sacred objects from within Australian collections, and brought home more than 1,200 ancestral remains to Australia from overseas.[38] Other examples include the Native American Grave Protection and Repatriation Act and the National Museum of the American Indian Act in the United States.[39] In Canada, the First Nations Sacred Ceremonial Objects Repatriation Act creates a mechanism by which cultural heritage sites and objects can be protected, preserved and repatriated. However, numerous examples throughout the world exist where restitution and repatriation are not respected and enforced. One such example is the recent legal case against indigenous chiefs in Canada, including Bernie Makokis, under the Wildlife Act, after they had offered a sacred headdress as a gift to a non-indigenous guest from the United States.

C. Right to cultural revitalization

74. Article 11 of the Declaration states that "indigenous peoples have the right to practise and revitalize their cultural traditions and customs". During the Expert Seminar on Indigenous Peoples' Rights with Respect to their Cultural Heritage, many presentations highlighted how important the process of cultural revitalization is for the cultural heritage of indigenous peoples. Some positive examples of indigenous peoples taking the initiative to revitalize their cultural heritage exist, such as the revitalization of the Maori language, or the use of bilingual education programmes and radio to strengthen and revitalize indigenous languages in Mexico.[40]

75. The increasing recognition of food production systems and seeds as cultural heritage is another instance of cultural revitalization. In Guatemala, for example, corn is considered intangible cultural heritage due to its historical, cultural, and spiritual value.[41]

76. In terms of good practices, the Indigenous Rights Programme of the National Commission for the Development of Indigenous Peoples, in Mexico, has implemented a programme on cultural rights, which supports community-level initiatives to revitalize

[36] See the submission from the International Repatriation Project.
[37] General Assembly resolution 69/2, para. 27.
[38] See the submission from Australia.
[39] See the submission from Human Rights Advocates.
[40] See the submissions from Cultural Survival and from Mexico.
[41] See the submission from Guatemala.

cultural heritage among indigenous peoples, including languages, music and traditional medicine. This includes training for indigenous youth on the protection of cultural heritage. To date, the programme has supported 505 community initiatives.[42] Another important element relating to the revitalization of indigenous cultures is the recognition of indigenous women as active agents of transformation. Recent studies have demonstrated that indigenous women play an immense role in the revitalization and the transmission of the cosmovision and cultural heritage of indigenous peoples.[43]

[42] See the submission from Mexico.

[43] See the submission from Comite de America Latina y el Caribe para la Defensa de los Derechos de la Mujer.

Annex

Expert Mechanism advice No. 8 (2015): Promotion and protection of the rights of indigenous peoples with respect to their cultural heritage

A. General

1. The cultural heritage of indigenous peoples is a holistic and inter-generational concept based on common material and spiritual values and includes distinctive manifestations in language, spirituality, membership, the arts, literature, traditional knowledge, customs, rituals, ceremonies, methods of production, festive events, music, sports and traditional games, behaviour, habits, tools, shelter, clothing, economic activities, morals, value systems, cosmovision, laws and activities such as hunting, fishing, trapping and gathering.

2. The cultural heritage of indigenous peoples is comprised of all objects, sites, plants and animal species, customs and practices, expressions, beliefs and knowledge, the nature or use of which has been transmitted from generation to generation, and which are regarded as pertaining to a particular people or its territory.

3. The cultural heritage of indigenous peoples includes tangible and intangible manifestations of their ways of life, achievements and creativity, and should be considered an expression of their self-determination and of their spiritual and physical relationships with their lands, territories and resources.

4. The right of access to and enjoyment of cultural heritage forms part of international human rights law and represents an important aspect of the rights of indigenous peoples, including the right to take part in cultural life, the right to enjoy their own culture and the right to self-determination. The right of indigenous peoples to self-determination implies their right to maintain, control, protect and develop their own cultural heritage.

5. The safeguard and development of the cultures of indigenous peoples require the protection of their lands, territories and resources. Cultural rights entail rights to land and natural resources, and imply an obligation to protect the cultural heritage of indigenous peoples through the recognition of their rights to own, control and manage their ancestral territories.

6. Heritage policies, programmes and activities affecting indigenous peoples should be based on full recognition of the inseparability of natural and cultural heritage, and the deep-seated interconnectedness of intangible cultural heritage and tangible cultural and natural heritage.

7. For indigenous peoples, cultural and natural values are inseparably interwoven and should be managed and protected in a holistic manner. It is imperative that all the instruments that derive from such regimes and relate to the cultural heritage of indigenous peoples are interpreted in the light of the United Nations Declaration on the Rights of

Indigenous Peoples, which is the most specific, representative and comprehensive instrument on indigenous cultural heritage."[44]

8. Indigenous peoples have the right to redress when their cultural heritage is misappropriated without their free, prior and informed consent. This includes a right to repatriation and restitution.

B. Advice for States

9. States should recognize the value and livelihood aspects of the cultural heritage of indigenous peoples, which is not limited to the protection of specific manifestations, symbols or objects, but also includes tangible and intangible manifestations of their ways of life, achievements and creativity, and of their spiritual and physical relationships with their lands, territories and resources.

10. Indigenous peoples should be consulted and enabled to actively participate in the whole process of identification, evaluation, classification, interpretation, preservation, safeguarding, monitoring, stewardship and development of their cultural and natural heritage.

11. States should revisit the draft Principles and guidelines for the protection of the heritage of indigenous peoples (E/CN.4/Sub.2/1995/26, annex), with a view to adopting them as an instrument to protect the cultural heritage of indigenous peoples.

12. In accordance with the United Nations Declaration on the Rights of Indigenous Peoples, States have the obligation to seek the free, prior and informed consent of indigenous peoples before adopting measures affecting their cultural or natural heritage. No inscription on lists of the United Nations Educational, Scientific and Cultural Organization (UNESCO) relating to the cultural or natural heritage of indigenous peoples or national lists or registers should be requested or granted without the free, prior and informed consent of the indigenous peoples concerned.

13. States need to legally recognize and protect the right of indigenous peoples to their lands, territories and resources through appropriate measures and policies, including declaring cultural heritage sites, sacred sites and other areas of spiritual significance to indigenous peoples as "no-go zones" for extractive industries, tourism development and other development projects which have not received the free, prior and informed consent of the indigenous peoples concerned.

14. States need to harmonize their national legislations based on the provisions of the Declaration and taking note of the outcome document of the World Conference on Indigenous Peoples (General Assembly resolution 69/2), and should develop national action plans for the protection and promotion of the cultural heritage of indigenous peoples.

15. In the case of cross-border indigenous peoples, bordering States should ensure the protection of cultural rights on an equal basis.

16. States should ensure that the benefits arising from the use of the lands, territories and resources of indigenous peoples' as World Heritage sites are defined by and genuinely accrue to the indigenous peoples concerned, in a fair and equitable manner.

17. States should guarantee that indigenous peoples have available financial resources that effectively allow them to maintain, safeguard and protect their cultural heritage,

[44] Presentations by Alexandra Xanthaki, Expert Seminar on Indigenous Peoples' Rights with Respect to their Cultural Heritage, 2015

including through the recognition of indigenous peoples' right to control and benefit from their natural resources, traditional knowledge and traditional cultural expressions.

18. States should provide measures for the revitalization and transmission of the cultural heritage of indigenous peoples in formal and informal education, including the promotion and protection of indigenous peoples' languages through effective mother tongue education for indigenous children.

19. States should take effective measures to assess, redress and remedy the effects of past injustices and violations of the rights of indigenous peoples by ensuring the restitution and repatriation of their cultural heritage.

20. States should increase their financial support to museums that are owned and managed by indigenous peoples, as part of the redress and repatriation process.

21. States should strengthen their legal and policy frameworks to encourage public and private museums to reach out to indigenous communities in order to better understand the impact of restoring stolen cultural heritage.

22. States should ensure that investors and corporations respect the cultural heritage of indigenous peoples. Businesses have a responsibility to protect the right to cultural heritage; if operations have a negative impact on the realization of that right, businesses have a responsibility to remedy that impact.

23. States that have not already done so should ratify the Convention for the Safeguarding of the Intangible Cultural Heritage, as a measure to increase the protection afforded to indigenous peoples' intangible cultural heritage.

C. Advice for international organizations

24. There is a need for better coordination and collaboration between institutions and agencies of the United Nations system on matters relating to cultural heritage and its human rights dimensions so as to increase coherence and avoid duplication of work. This issue could be addressed in the system-wide action plan on indigenous peoples that is currently being developed, as requested by the General Assembly in the outcome document of the World Conference on Indigenous Peoples.

25. Relevant special procedures should monitor State policies on access to cultural heritage to ensure that they respect the principles of the Declaration and that States act in accordance with the provisions in the International Labour Organization Indigenous and Tribal Peoples Convention No. 169 that protect cultural heritage.

26. International organizations working in the field of cultural heritage, such as UNESCO, the World Intellectual Property Organization (WIPO) and other United Nations specialized agencies, must integrate and respect the rights proclaimed in the Declaration in their work. This includes obtaining the free, prior and informed consent of indigenous peoples before any decision affecting their lands is taken.

27. The World Heritage Committee should take effective measures to ensure that the protection of World Heritage does not undermine indigenous peoples' relationship with their traditional lands, territories and resources, their livelihoods and their rights to protect, exercise and develop their cultural heritage and expressions.

28. The World Heritage Committee needs to review its current procedures and Operational Guidelines, with the full and effective participation of indigenous peoples, to ensure that the implementation of the World Heritage Convention is consistent with the Declaration.

29. The World Heritage Committee should adopt changes to the criteria and regulations for the assessment of "outstanding universal value" so as to ensure that the values assigned to World Heritage sites by indigenous peoples are fully and consistently recognized as part of their outstanding universal value.

30. UNESCO and the World Heritage Committee should dedicate resources to the development of mechanisms to ensure that indigenous peoples can effectively participate in all World Heritage Convention processes affecting them and that their rights, priorities, values and needs are duly recognized, considered and reflected.

31. UNESCO should strengthen its efforts to finalize its Policy on Indigenous Peoples, in cooperation with indigenous peoples and the three United Nations mechanisms with specific mandates regarding the rights of indigenous peoples.

32. UNESCO should consider developing a charter on sports and traditional games that protects the cultural heritage of indigenous peoples in the area of sports and traditional games.

33. United Nations institutions should continue to develop guidelines and other norms and practices aimed at the protection and inclusion of traditional cultural heritage, including the role of traditional knowledge, in enhancing community resilience and sustainable development.

34. WIPO and its Intergovernmental Committee should ensure that indigenous peoples fully participate in the current negotiations and that their free, prior and informed consent is sought and obtained before any new international instruments for the protection of traditional knowledge is adopted. The process in which laws governing the use of traditional knowledge, cultural expressions and genetic resources are developed needs to conform with the rights guaranteed under the Declaration, particularly article 31.

35. The Human Rights Council should consider calling for an immediate halt to any removal of ancestral remains and cultural items indigenous peoples for any reason, unless their free, prior and informed consent is obtained.

D. Advice for indigenous peoples

36. Indigenous peoples are the primary keepers of their cultural heritage. As such they have an active role to play in its preservation, transmission and revitalization.

37. Indigenous peoples should ensure the equal participation of women in discussions and decisions on cultural heritage at the level of the community.

38. Indigenous peoples should engage and take an active part in international fora related to the protection of cultural heritage, notably under the aegis of WIPO and UNESCO.

39. Indigenous peoples should participate in the practical Workshops for Indigenous Peoples and Local Communities on intellectual property, traditional knowledge and traditional cultural expressions that are organized by WIPO, which impart knowledge of the main principles of the intellectual property system, and explain, among other things, the rationale, objectives and methodology of the negotiations that are currently being conducted by the Intergovernmental Committee.

40. Indigenous peoples should participate actively to educate the non-indigenous population about the importance of the collective protection of the heritage of indigenous peoples.

41. Indigenous peoples should ensure the inter-generational transmission of their cultural heritage within their communities.

E. Advice for museums

42. Museums and other places in which the cultural heritage of indigenous peoples is stored should inform the relevant indigenous peoples and develop mechanisms to facilitate the return of such cultural heritage when sought by the indigenous peoples concerned.

United Nations A/HRC/30/54

General Assembly

Distr.: General
17 August 2015

Original: English

Human Rights Council
Thirtieth session
Agenda item 5
Human rights bodies and mechanisms

Summary of responses to the questionnaire seeking the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples

Report of the Expert Mechanism on the Rights of Indigenous Peoples

Summary

The present conference room paper contains a draft summary of responses from States and indigenous peoples to the questionnaires seeking their views on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples, as requested by the Human Rights Council in its resolution 27/13. Following discussions at the eighth session, the Expert Mechanism on the Rights of Indigenous Peoples will finalize this document for submission to the Human Rights Council at its thirtieth session.

GE.15-13902(E)

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I. Introduction

1. In its resolution 18/8 of 2011, the Human Rights Council first requested the Expert Mechanism on the Rights of Indigenous Peoples to undertake, with the assistance of the Office of the United Nations High Commissioner for Human Rights (OHCHR), a questionnaire on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples. In its resolutions 21/24 (2012) and 24/10 (2013), the Council requested the Expert Mechanism to continue to undertake the survey, with a view to completing summaries of responses for presentation to the Council at its twenty-fourth and twenty-seventh sessions, respectively. In its resolution 27/13 of 25 September 2014, the Human Rights Council once again requested the Expert Mechanism on the Rights of Indigenous Peoples to continue this exercise. The present report builds upon reports presented to the Human Rights Council at its twenty-first, twenty-fourth and twenty-seventh sessions (A/HRC/21/54, A/HRC/24/51 and A/HRC/27/67).

2. Upon reviewing the questionnaires distributed in previous years, the Expert Mechanism on the Rights of Indigenous Peoples decided to update them, with the aim of streamlining and clarifying the information sought from States and indigenous peoples, as well as taking into account the outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples (General Assembly resolution 69/2). The revised questionnaire focuses on best practices in the areas of self-determination; participation in decision-making including free, prior and informed consent; languages and culture; non-discrimination and equality; lands, territories and resources; treaties, agreements and other constructive arrangements; and measures taken to promote and protect rights of indigenous women, youth, children, elders, persons with disabilities and any other vulnerable groups.

3. The questionnaires for indigenous peoples and States were designed to be as consistent as possible with each other, in order to facilitate the comparison of responses and generate ideas for partnerships for implementation of the Declaration. All of the questions posed to States and indigenous peoples are reproduced below. The complete questionnaires, as well as the responses received (where permission was granted) are available on the website of the Expert Mechanism.[1]

4. The Expert Mechanism thanks those who responded to this year's questionnaire. Responses were received from Australia, Burundi, Chile, Colombia, Costa Rica, Cuba, Denmark and the Government of Greenland, France, Guatemala, Japan, Paraguay and Peru.

5. The Expert Mechanism also thanks the following indigenous peoples and indigenous peoples' organizations and representative bodies for their responses to this year's questionnaire: ALDET Centre (Saint Lucia); Asociación Kunas Unidos por Napguana (Panama); Corporación Red Nacional de Mujeres Comunales, Comunitarias, Indígenas y Campesinas de la República de Colombia (REDCOMUNCACOL); Elnu Abenaki Tribe (United States); Les Amis du Sankuru (Democratic Republic of the Congo); ONG ADJMOR (Mali); Rehoboth Basters Community (Namibia); Saami Parliament of Finland; and Tcemashane Community Development Trust (Botswana).

6. The Expert Mechanism also thanks the Faculty of Law at the University of Manitoba, Canada, for its assistance in reviewing the responses from States.

[1] Available from http://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/QuestionnaireDeclaration.aspx

II. Responses from States and from indigenous peoples

7. This section summarizes the responses from States and from indigenous peoples to the questionnaire. It must be borne in mind that responses from States and indigenous peoples may have conflicting views on the benefits of measures adopted to implement the Declaration or the ideal strategies to achieve its implementation.

A. National implementation strategies

8. The questionnaire posed the following question to States: "Does the State have an overarching national implementation strategy to attain the goals of the Declaration? If yes, please provide details, including the involvement of State institutions and indigenous peoples. If not, are there any plans to develop one?"

9. This question is linked to the commitment made by States in the outcome document of the World Conference on Indigenous Peoples, through their own representative institutions, to develop and implement national action plans, strategies or other measures and, where relevant, to achieve the ends of the Declaration.

10. Most States that responded did not have an overarching national implementation strategy specifically linked to attaining the goals of the Declaration. However, in their responses they discussed how the situation and rights of indigenous peoples are addressed through national development strategies, as well as programmes and policies in specific sectors, such as health and education.

11. Guatemala discussed the "K'atun Nuestra Guatemala 2032" strategy, which was prepared with the participation and consultation of the three different indigenous peoples in Guatemala: the Maya, Garifuna and Xinka. The plan guided the work of the State by focusing on reducing the gaps in access to education, improving overall health and improving access to water and basic sanitation. In addition, Guatemala's response highlighted that from 2013 onwards, the National Budget Law stipulated that budget-executing agencies needed to provide information regarding the beneficiary population of their programmes, including in terms of ethnicity.

12. In Costa Rica, the Vice-Ministry of Political Affairs had a strategy on indigenous peoples based on four axes: a consultation policy; a policy for the recovery of lands, territories and resources; a mechanism for dialogue with the 24 indigenous territories in the country; and inter-institutional coordination. Costa Rica's response also examined several sector-specific initiatives relating to indigenous peoples in the areas of health, education and employment.

13. Those States that did not have a national strategy nonetheless reported on measures they had taken to ensure that the goals of the Declaration were considered in policy and programme development. Australia, for example, noted that relevant Government agencies liaised closely on relevant issues to ensure the Declaration was taken into account.

14. Japan's response highlighted the establishment of a high-level Advisory Council for Future Ainu Policy, which referred to relevant provisions of the Declaration. This Council developed basic principles for new Ainu policy. Subsequently, Japan established the Council for Ainu Policy Promotion to discuss comprehensive and effective measures for Ainu people, which reflected the opinions of the Ainu people.

15. Paraguay noted that it had a National Human Rights Plan, which sought, inter alia, to address structural inequalities and discrimination in conformity with the goals of the Declaration.

16. Peru stated that it did not have a national plan, but in 2010 it established the Ministry of Culture, which included a Vice-Ministry for Intercultural Affairs. The Vice-Ministry was directly responsible for implementing specialized policies for indigenous peoples and technical assistance, in coordination with the pertinent public entities, based on dialogue with indigenous peoples' organizations. It was also in charge of administering territorial reserves established for indigenous peoples in voluntary isolation or initial contact.

17. Although Colombia did not have an overarching national implementation strategy, its response focused on its national laws and policies to promote and protect the rights of indigenous peoples in the areas of health and education.

18. Burundi noted that it had developed policies and strategies to improve the living conditions of the Batwa people, particularly in the areas of land, health and education.

19. A similar question was posed to indigenous peoples: "Do you have an overarching action plan or strategy to achieve the ends of the Declaration? If yes, please provide details about the implementation strategy, including how indigenous peoples have been involved. If not, are there any plans to develop one?"

20. Most indigenous peoples' organizations reported on a lack of national strategies or plans of action to achieve the ends of the Declaration. Responses from indigenous peoples highlighted the fact that the Declaration should be seen as an instrument of action for national policies that ensure the promotion and protection of indigenous peoples' rights.

B. Self-determination and autonomy

21. The questionnaire posed the following question to States and indigenous peoples: "Have specific legislative, policy, or administrative measures relating to self-determination and autonomy been adopted in your country? If yes, please provide details. If not, please outline any plans to develop legislative, policy or administrative measures in this area."

22. The importance of self-determination has been highlighted throughout the Expert Mechanism's work, including in its studies on access to justice (see A/HRC/24/50 and A/HRC/27/65) and participation in decision-making (see A/HRC/18/42 and A/HRC/21/55). The Expert Mechanism has repeatedly maintained that self-determination is an essential element for the fulfilment of other rights.

23. In their replies to the questionnaire, some States noted that they were party to international instruments that recognized the right of self-determination, which formed part of their domestic law.

24. Denmark and the Government of Greenland referred to the Act on Greenland Self-Government, which came into force in October 2009. The Act recognized that the people of Greenland were a people pursuant to international law, with the right to self-determination.

25. Paraguay's Constitution recognized the existence of indigenous peoples, including their right to preserve and develop their ethnic identity, their political and legal systems, as well as communal ownership of land in sufficient quantity and quality to preserve and develop their particular way of life. The Guatemalan Constitution also recognized specific ethnic groups, including the Maya people, respecting and promoting their way of life, customs, traditions, languages and use of traditional dress.

26. In Australia, the Aboriginal and Torres Strait Islander Peoples Recognition Act of 2013 recognized Aboriginal and Torres Strait Islanders as the first peoples of Australia. The Prime Minister remained committed to holding a referendum to recognize Aboriginal and Torres Strait Islander peoples in the Constitution by 2017.

27. In Chile, a free, prior and informed consultation process had been taking place since 2014, through which the Ministry of Social Development was seeking to establish new institutions that would validate the right of indigenous peoples to develop their rights to autonomy and self-determination. The indigenous peoples of the country decided to create a national council system to represent each of the various peoples (Mapuche, Aymara, Rapa Nui, Atacama, Quechua, Diaguita, Kawashkar and Yagán). There was also a "Proposal for a State Policy Agenda for Decentralization and Territorial Development of Chile", which recognized the Araucanía Region as multinational and multicultural in recognition of the Mapuche people.

28. In relation to self-determination, Peru's measures had two areas of focus. The first was taking steps to improve the identification and registration of indigenous peoples. The second was to recognize the right of self-determination for indigenous peoples in voluntary isolation and those in initial contact, including the recognition and protection of territorial reserves.

29. In the case of Costa Rica, at the time of reporting, the Government was supporting a draft law on indigenous peoples' autonomy which was being discussed by the Legislative Assembly.

30. Colombia, in addition to highlighting its ratification of the International Labour Organization (ILO) Convention No. 169 in 1991, also referred to Decree 1953 of 2014, which created a special regime for indigenous peoples' territories regarding the administration of their own health, education, and water and sanitation systems.

31. Responses from indigenous peoples varied significantly. In this regard, the Asociación Kunas Unidos por Napguana reported that the Kuna people had enjoyed autonomy over their territory (Comarca de Guna Yala) in Panama since 1935, under the leadership of the Kuna General Congress, through which 49 communities were represented. In other cases, while the legal framework provided for significant levels of autonomy, those rights were not in fact respected. Finally, some responses indicated situations in which domestic laws and institutions still did not recognize indigenous peoples (ONG Adjmor reporting on the situation in Mali, Rehoboth Basters Community reporting on the situation in Namibia, and Tsemashane Community Development Trust reporting on the situation in Botswana).

C. Participation in decision-making and free, prior and informed consent

32. The questionnaire posed the following question to States and indigenous peoples: "Have specific legislative, policy, or administrative measures been adopted to implement rights relating to participation in decision-making, including the obligation to seek free, prior and informed consent? If yes, please provide details. If not, please outline any plans to develop legislative, policy or administrative measures in this area."

33. The role that the right to participation plays in the implementation of the Declaration has been examined by the Expert Mechanism, including in its study on participation in decision-making (A/HRC/18/42), in which it stated that the right to participate is indivisible from and interrelated with other rights, such as the right to self-determination and rights to lands, territories and resources.

34. Several States noted that the right of indigenous peoples to participate in decision-making was part of domestic law. For example, Chilean law provided a procedure for indigenous peoples to have a technical advisory role when the Government was taking legislative or administrative measures that directly or indirectly impacted them. In Guatemala, the right to participate in decision-making was established in law, with the goal

of achieving respect for all cultures and peoples in the country, and promoting harmonious intercultural relations and participation in democratic processes.

35. Denmark and the Government of Greenland responded that the Government of Greenland was democratically elected and that all members of the Parliament and Government were of Inuit descent.

36. Although some States did not have specific legislation, they indicated that processes were underway to develop consultation protocols. For example, Paraguay and Peru had been developing consultation protocols in consultation with indigenous organizations.

37. France reported that the successive adoption of laws on New Caledonia (1999) and French Polynesia (2004) had allowed for significant progress in the full and effective participation of indigenous peoples in decisions that directly or indirectly affect them. The degree of autonomy was greater with each successive law. In French Guiana, it was decided to create a consultation council of Amerindians and *Bushinenge*.

38. Colombia made reference to the special circumscription for the election of senators and representatives from indigenous communities, which was enshrined in the Constitution. Colombia also highlighted the Mesa Permanente de Concertación (Permanent Commission for Dialogue), which facilitated dialogue between indigenous peoples and the State on all administrative and legislative measures that may affect them. Indigenous peoples were participating in this mechanism through five umbrella organizations.

39. Other States highlighted the general democratic processes as providing opportunities for indigenous peoples to participate in decision-making. Burundi, for example, highlighted the ways in which the national electoral system provided representation to the Batwa people.

40. In terms of responses from indigenous peoples, the Saami Parliament of Finland reported that there were no provisions in Finnish law requiring free, prior and informed consent. However, a proposed Amendment Act of the Saami Parliament would require authorities to conduct bona fide negotiations seeking agreement with the Saami Parliament concerning significant measures affecting the Saami homeland of the status of the Saami people.

41. Asociación Kunas Unidos por Napguana indicated that due to the special status of the Guna Yala region, the State had to consult the Kuna people prior to implementing large projects within their lands. In that regard, the Kuna Congress had rejected several projects because they threatened the integrity of their territory. They stressed, however, that in other indigenous regions of Panama, those consultation processes had not been respected, in particular in the lands of the Ngäbe-Buglé and Naso peoples.

42. The Teemashane Community Development Trust responded that, in Botswana, indigenous peoples were only consulted insofar as consultations on a particular issue were carried out through traditional meetings or village gatherings. However, this system did not favour the views of indigenous peoples. Rather, it was usually the dominant society's views and opinions that informed decisions.

D. Cultures and languages

43. The questionnaire posed the following question to States and indigenous peoples: "Have specific legislative, policy, or administrative measures been adopted to implement rights relating to cultures and languages? If yes, please provide details. If not, please outline any plans to develop legislative, policy or administrative measures in this area."

44. Indigenous peoples' languages and cultures are of fundamental importance for the protection and promotion of indigenous peoples' rights. As the Expert Mechanism argued in its advice on this theme, "The Declaration on the Rights of Indigenous Peoples should be the basis of all action, including at the legislative and policy level, on the protection and promotion of indigenous peoples' rights to their languages and cultures" (A/HRC/21/53, annex, para. 5).

45. Paraguay had developed a national plan of indigenous languages through a process of free prior and informed consultation with representatives from the 19 indigenous peoples in the country. The Linguistics Policy Secretariat had started activities to document and revitalize indigenous languages, especially those at greater risk. Efforts were also taken to raise public awareness nationally and internationally on the status of indigenous languages.

46. In Costa Rica, the National Policy on Cultural Rights included indigenous peoples' cultural rights as one of its five strategic axes. The objective of this axis was to promote the diversity and cultural wealth of indigenous peoples, both within and outside indigenous territories. Also, the Department of Intercultural Education of the Ministry of Education promoted respect and strengthening of indigenous cultures and languages.

47. Japan passed the Ainu Culture Promotion Act in 1997, which promoted Ainu culture and languages, as well as fostering public understanding of Ainu history. A national centre for revitalizing Ainu culture was set to open in 2020.

48. Peru had trained civil servants at the national and regional level on language rights and continued to work to strengthen the registry of interpreters and translators, which provided services in indigenous languages. Peru also reported having media in indigenous languages.

49. Guatemala indicated that it had a national law for the protection of cultural heritage and that the Constitution and national laws supported bilingual education as a means to affirm and strengthen the identity and cultural values of communities.

50. Chile was developing a process of national consultation for the creation of the Ministry of Culture with the nine indigenous peoples in Chile. The new ministry would provide indigenous peoples with State support to revitalize and protect their cultures and languages. There was also a recovery and revitalization of indigenous languages programme that provided research and other forms of support.

51. France indicated that, in Mayotte, a council of culture, education and the environment was set up in consultation with the Mayotte people. A regional cultural programme was developed focusing on the fields of languages, literature and the arts. In New Caledonia, the Tjibaou cultural centre opened in 1998 to promote the Kanak culture. The French Ministry of Culture had an active policy for the promotion of Polynesian culture. French Polynesia in particular had two museums, an arts academy, a house of culture and two academies (Polynesian and Marquesas). The French Government provided support when needed, particularly in the context of applications from Polynesia to secure recognition of sites in the United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage listings. In accordance with the Convention for the Safeguarding of Intangible Cultural Heritage, France began to develop its inventory, including the Marake ritual in Guyana and the AIJE-Aro area in New Caledonia.

52. Red COMUNCACOL reported that bilingual education was being contemplated in legislative, policy and administrative measures in Colombia. ONG Adjmor indicated that, while indigenous cultures were promoted in Mali through support to traditional expressions and cultures, and the teaching of indigenous languages in primary schools, those programmes were often not sustainable in the long term due to budget constraints. In Panama, under the coordination of the General Congress, the Kuna people had

implemented bilingual education in schools in their region for the previous 10 years. However, the national education system in general did not respond to the specific needs of the Kuna people, often alienating them from their cultural and linguistic identity.

E. Non-discrimination and equality

53. The questionnaire posed the following question to States and indigenous peoples: "Have specific legislative, policy, or administrative measures relating to non-discrimination and equality been adopted? If yes, please provide details. If not, please outline any plans to develop legislative, policy or administrative measures in this area."

54. Non-discrimination and equality are a central principle of human rights. As article 2 of the Declaration states, "Indigenous peoples and individuals are free and equal to all other peoples and individuals, and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity."

55. Some States, including Cuba and Paraguay, noted that discrimination was prohibited under domestic law. Costa Rica identified not only domestic laws and policies, but also its ratification of international human rights instruments that prohibited all forms of discrimination. Costa Rica had a National Policy for a Society Free from Racism, Discrimination and Xenophobia, which in addition to strengthening the recognition of indigenous peoples' rights (and those of other groups), also sought to improve their living conditions.

56. Guatemala indicated that, in addition to national laws against racial discrimination, there was also a national policy for the advancement of women, which promoted the participation of Maya, Garifuna and Xinka women in the areas of economic, social, political and cultural development.

57. In 2015, the Government of Japan was to conduct a national survey on Ainu issues to find out and analyse the current level of public understanding of discrimination against the Ainu and determine the actual situation of discrimination against the Ainu. The results of this survey would be used when developing future policies.

58. Peru had taken steps to improve access to health, including adapting services to the particular needs of indigenous peoples. This included a national multisectoral health coordinating process with participation by civil society and indigenous organizations in the preparation and monitoring of the implementation of proposals in the areas of HIV/AIDS, malaria and tuberculosis.

59. There were efforts being made by the Government of Burundi to change the negative perceptions that other Burundians had of the Batwa people. The Burundi Constitution also recognized that all citizens were equal before the law. Furthermore, the national human rights policy had a chapter specifically relating to the Batwa.

60. Similarly to the State responses, several responses from indigenous peoples referred to constitutional and other provisions relating to non-discrimination and equality before the law. However, these responses also emphasized that there was a significant implementation gap and that indigenous peoples continued to be victims of discrimination, including in accessing social services.

F. Lands, territories and resources

61. The questionnaire posed the following question to States and indigenous peoples: "Have specific legislative, policy, or administrative measures been adopted to implement

rights relating to lands, territories and resources? If yes, please provide details. If not, please outline any plans to develop legislative, policy or administrative measures in this area."

62. The Expert Mechanism has repeatedly emphasized the importance of indigenous peoples' rights relating to lands, territories and resources, including in the context of access to justice, languages and cultures, and disaster risk reduction.

63. Peru noted that the titling of indigenous forest community lands was fundamental for the protection of other rights. Peru had a project aimed at titling and registering lands of indigenous communities in the Amazon. Paraguay had undertaken to title lands for several communities, including expropriating lands for the Sawhoyamaxa in compliance with the 2006 judgment of the Inter-American Court of Human Rights.

64. Colombia reported on an initiative to demarcate sacred sites in the Sierra Nevada de Santa Marta region, including through a consultation process with the indigenous peoples involved. Colombia also reported on measures taken to strengthen indigenous peoples' autonomy and governance in the Amazonas, Guainía and Vaupés departments.

65. France indicated that in New Caledonia, the Noumea agreements had fully recognized the special relationship the Kanak had with the Earth.

66. Denmark and the Government of Greenland noted that the Act on Greenland Self-Government provided for Greenland to assume a series of new fields of responsibility and introduced new arrangements regarding mineral resource activities in Greenland.

67. In Guatemala, the Ministry of Land Affairs was responsible for coordinating the implementation of land policy, including access to land; resolution of land disputes; access to other productive assets; and predictability and legal certainty. There was a regulation that established an administrative procedure for registration of the system of collective land tenure of indigenous communities. Connected to this procedure, 200 people (leaders, indigenous authorities, public authorities, academics and donors) were brought together to discuss the importance of communal lands and the need for environmental public entities. Finally, Guatemala had provided legal certainty to four Q'eqchi Maya communities settled within the buffer zone of the Biosphere Reserve Sierra de las Minas, which recognized the communal ownership of certain ancestral lands.

68. In relation to lands, territories and resources, some States identified the need to consider third-party interests and other public interests.

69. Japan provided examples of access to resources. For example, the local Government provided Ainu people special permission to catch salmon in inland waters to protect their traditional rituals.

70. Responses from Red COMUINCACOL (Colombia) and ONG Adjmor (Mali) stated that measures for protecting indigenous peoples' lands and resources existed, but that their enforcement was very weak. Tcemashane Community Development Trust mentioned that in Botswana the Tribal Land Act had been used to displace indigenous peoples from their lands in the name of conservation and social and economic development of the country.

G. Treaties, agreements and other constructive arrangements with States

71. The questionnaire posed the following question to States and indigenous peoples: "Have specific legislative, policy, or administrative measures been adopted to implement rights relating to treaties, agreements and other constructive arrangements with States? If yes, please provide details. If not, please outline any plans to develop legislative, policy or administrative measures in this area."

72. In response to this question, most States made reference to work to implement international human rights treaties, such as ILO Convention No. 169 and the Convention on the Elimination of All Forms of Racial Discrimination, rather than to treaties or other constructive agreements with indigenous peoples. Peru indicated that it did not have any treaties with indigenous peoples, but there were agreements arising from consultation processes, which must follow national laws on prior consultation. Colombia reported on measures it was taking to ensure the protection of indigenous peoples in voluntary isolation and initial contact.

73. Only one response from indigenous peoples addressed the specific issue of constructive arrangements between States and indigenous peoples. Asociación Kuna Unidos por Napguana highlighted the recognition of Kuna territory by the State in 1938, and recognition of their authorities (Congreso General Kuna) in 1953. They also referred to more recent national laws protecting cultural heritage and traditional handicrafts of the Kuna people and the establishment of the Ngäbe-Buglé indigenous territory in 1997.

H. Indigenous women, youth, children, elders, persons with disabilities and any other vulnerable groups

74. The questionnaire posed the following question to States: "Has the State taken any particular measures to promote and protect the rights of indigenous women, youth, children, elders, persons with disabilities and any other vulnerable groups (such as LGBT persons)? If yes, please provide details. If not, please outline any plans to develop measures relating to these groups."

75. In its follow-up study on access to justice, the Expert Mechanism drew attention to the fact that indigenous individuals who belonged to other vulnerable groups often suffered from discrimination on multiple grounds, which could put them in a particularly disadvantaged situation with respect to their rights. The Expert Mechanism advised States to "address the root causes of multiple forms of discrimination facing these groups, including systemic biased use of discretionary powers, poverty, marginalization and violence against indigenous women" (A/HRC/27/65, annex, para. 8).

76. In response to this question, many States identified general policies aimed at addressing the situation of women, youth, older persons and persons with disabilities. It was not always clear from the responses whether there were specific programmes targeted at indigenous persons within these groups.

77. Since 2012, Colombia had implemented a programme for the protection of the rights of internally displaced indigenous women, seeking to address the disproportionate impact of forced displacement on this group caused by armed conflict. At the heart of this public policy was the recognition of displaced indigenous women as subjects of special protection by the State. The design of the programme included consultations with indigenous peoples. Colombia also had a National Action Plan for the protection of the human rights of indigenous women.

78. Peru highlighted three particularly vulnerable groups identified in State policy: indigenous individuals who did not have identification documents, which perpetuated the level of invisibility within the State; indigenous peoples living in border areas where there was very difficult access; and indigenous women, particularly in terms of including them in national level plans and policies on gender.

79. In Japan, the Third Basic Plan for Gender Equality approved by the cabinet in 2010 stipulated that measures should be taken for Ainu women in cases where they were forced into difficult situations due to their gender.

80. Costa Rica highlighted its Pact for an Accessible and Inclusive Country, a programme aiming to address the double vulnerability of persons with disabilities who also belonged to other vulnerable groups, including indigenous peoples.

81. Paraguay identified programmes to address gender-based violence as well as extensive community centres, some of which were aimed at urban indigenous peoples.

82. The questionnaire posed the following question to indigenous peoples: "Have any particular measures been taken to promote and protect the rights of indigenous women, youth, children, elders, persons with disabilities and any other vulnerable groups (such as LGBT persons)? If yes, please provide details. If not, please outline any plans to develop measures relating to these groups."

83. Responses were very general, without a specific focus on indigenous peoples suffering from discrimination on multiple grounds.

I. Participation of indigenous peoples in the development and implementation of legislative, policy or administrative measures that affect them

84. The questionnaire posed the following question to States and indigenous peoples: "To what extent do indigenous peoples themselves participate in the development and implementation of legislative, policy, or administrative measures that affect them? Is their free, prior and informed consent required by law?"

85. The Expert Mechanism has examined the role of participation in the implementation of the Declaration, including the principle of free, prior and informed consent. In its study on participation in decision-making, the Expert Mechanism noted that specific laws and policies could lead to the effective implementation of this principle (A/HRC/18/42, para. 63).

86. Peru had carried out 19 consultation processes with indigenous peoples, of which 8 had so far resulted in agreements. The issues addressed in those consultations included environmental monitoring, participation in oversight bodies and employment. Peru had also organized an international seminar on prior consultation in the hydrocarbon sector to provide a comparative approach and lessons learned.

87. Through the Permanent Commission for Dialogue (Mesa Permanente de Concertación), the National Government of Colombia consulted with indigenous peoples regarding all administrative and legislative measures that could affect them. There was also a Constitutional Court judgment (T-129 of 2011) establishing exceptional cases in which free, prior and informed consent of indigenous peoples must be sought. These included projects that would involve the displacement of indigenous communities, the storage of toxic waste on indigenous lands, or a high social, cultural or environmental impact on the community.

88. Chile explained that there were national representative bodies of indigenous peoples that were consulted when laws and policies were developed. In Paraguay, a legislative bill was currently being studied that would ensure effective participation of indigenous peoples in development projects that could have negative impacts on their way of life, their lands and the environment. In Guatemala, there was currently a bill on consultation with indigenous peoples before Congress.

89. Costa Rica cited its ratification of ILO Convention No. 169, and the fact that domestic legislation required free, prior and informed consent in line with this international instrument.

90. In collaboration with non-governmental organizations, Burundi had developed agropastoral and various self-development projects with the Batwa to increase revenue and to meet the needs of Batwa people beyond food.

91. The Saami Parliament of Finland indicated that the Parliament of Finland had provisions on the obligation to hear the Saami people in its rules of procedure. According to those rules, a committee considering a Government bill or other issue concerning the Saami people in particular must reserve the right for representatives of the Saami people to be heard by the committee. However, that provision did not require the committee to take account of proposals made by the Saami Parliament.

J. Raising awareness about the Declaration

92. The questionnaire posed the following question to States: "Has the State taken measures to raise awareness about the Declaration among various sectors of society, including Parliamentarians, the judiciary, the civil service, and indigenous peoples?"

93. In the outcome document of the World Conference on Indigenous Peoples, States committed themselves to promoting awareness of the Declaration among all sectors of the society, including members of the legislatures, the judiciary and the civil service (General Assembly resolution 69/2, para. 7).

94. Several States indicated that they had developed resources such as training manuals and held training workshops on the Declaration. Australia's National Human Rights Commission had produced reports and developed resources to help Aboriginal and Torres Strait Islander peoples understand and protect their rights. The Aboriginal and Torres Strait Islander Social Justice Commissioner, in collaboration with the National Congress of Australia's First Peoples held "Declaration Dialogue" meetings in 2013 and 2014 with indigenous communities throughout Australia to raise awareness of the Declaration.

95. Denmark and the Government of Greenland reported on the translation into Greenlandic and publication of several international human rights instruments, including the Declaration and ILO Convention No. 169. The Parliament of Greenland endorsed the Declaration at an early stage and called for enhanced efforts to disseminate it to the public and through educational facilities.

96. Paraguay had taken action to inform legislators, lawyers, judges and administrative authorities on promoting the rights of indigenous peoples with an emphasis on the Declaration. In cooperation with the Federation for the Self-Determination of Indigenous Peoples, Paraguay had developed a manual on indigenous rights and human rights, published with the support of the United Nations Development Programme. In 2013, the Justice and Indigenous Peoples project provided technical assistance to the judicial officials on human rights doctrine and its applicability in the administration of justice. Indigenous peoples had participated in the process of developing the materials and providing information on their customs.

97. Guatemala had several programmes to increase understanding of civil servants, public institutions and civil society regarding indigenous peoples' rights. These included a postgraduate programme on human rights, the rights of indigenous peoples, racism and racial discrimination, aimed at judicial officers, especially in the judicial branch and the Institute of Public Criminal Defense. There was also a diploma course on human rights, racism and discrimination aimed at civil servants from different institutions of the executive branch and young members of civil society.

98. Peru had developed four training manuals, including one on the rights of indigenous peoples in Peru, to train environment officials and leaders on these issues in an effort to increase competency.

99. In Japan, Ainu policy made reference to relevant provisions of the Declaration. The Declaration had also been translated into Japanese.

100. The questionnaire posed the following question to indigenous peoples: "Have you taken any measures to raise awareness about the Declaration at various levels of the community and governance to enhance the prospects of its implementation?"

101. Responses from indigenous peoples referenced capacity-building workshops and the development of training materials. Red COMUINCACOL stressed the importance of developing easy-to-understand learning materials and using communications media and the education system. Les Amis du Sankuru indicated that, while they had carried out dissemination within their organization and nearby communities, financial constraints made it difficult to reach more distant provinces and to purchase media space for dissemination.

K. Challenges encountered in adopting measures and implementing strategies to achieve the ends of the Declaration

102. The questionnaire posed the following question to States and indigenous peoples: "What are the main challenges encountered in adopting measures and implementing strategies to achieve the ends of the Declaration?"

103. States noted a range of challenges to achieve the ends of the Declaration. Some States highlighted the translation of the Declaration into indigenous languages as an ongoing challenge for future work. Burundi identified the low literacy rates among the Batwa as a challenge. Chile noted that a specific challenge was the diversity of indigenous peoples within the country, which required a detailed framework to respond to the differences amongst indigenous peoples.

104. Peru indicated that the lack of national data presented a problem for implementation. It also indicated that consultation was a challenge because capacity had to be built among both public sector staff and indigenous leaders. Peru also reiterated the challenge of the diverse and dispersed populations of indigenous peoples.

105. Guatemala indicated a need to strengthen institutional mechanisms to protect indigenous peoples' rights, as well as a need for more opportunities for inter-agency coordination with civil society to monitor the actions and measures in the implementation of the Declaration on the Rights of Indigenous Peoples and to achieve the fulfilment of its objectives.

106. Colombia cited three challenges: the re-establishment of peace in those indigenous territories that were still facing difficulties caused by armed conflict; the complexities of implementing policies and programmes, given the geographical dispersion of indigenous peoples in the country; and conflicts of representation within some indigenous organizations/communities.

107. Some States again reiterated that the provision of financial resources was essential to implementation of the Declaration, particularly in relation to promoting and revitalizing languages.

108. The main challenges identified by indigenous peoples included lack of political will, lack of knowledge of the Declaration among local authorities, and the fact that indigenous peoples' rights were often set against the rights of the mainstream population.

L. Promising practices

109. The questionnaire posed the following question to States and indigenous peoples: "In the light of the information provided above, please provide examples of promising practices regarding possible appropriate measures and implementation strategies to attain the goals of the Declaration."

110. Some States emphasized the need to assess the impact of policies and programmes where success was not being achieved, and to be prepared to try new approaches. Australia emphasized a need for best practice strategies to rely on clear data, with a focus on practical outcomes to ensure that policies deliver real results on the ground. It was important to engage indigenous peoples in this problem-solving approach.

111. In Chile, the National Indigenous Development Corporation and the Department of the Environment worked jointly and in coordination to provide technical support to indigenous consultation processes in connection with environmental assessment processes.

112. Guatemala highlighted, among other public policy and institutional initiatives, the establishment in 2014 of the Cabinet for Indigenous Peoples and Interculturalism, which formulated proposals for political, administrative and legal reforms, focusing on integral and culturally-appropriate development for indigenous peoples. This office included members of the Executive and representatives of the Maya, Garifuna and Xinka peoples. Another example of best practice was the Institution for the Defence of Indigenous Women (Defensoría de la mujer indígena), which was a Governmental institution that worked with indigenous women to develop policies, plans and programmes for the prevention, protection and eradication of all forms of violence and discrimination against indigenous women.

113. Peru indicated that the training of interpreters and translators had allowed for services, particularly health services, to be provided in different languages. Those interpreters had also assisted in the consultation processes.

114. The Saami Parliament of Finland noted that Finland, Sweden and Norway had initiated negotiations on a Nordic Saami Treaty, with the objective of harmonizing legislation concerning the Saami people. Those negotiations had included the Saami Parliaments of the three countries. However, negotiations on the treaty had been suspended for the time being. Also, Pan-Nordic conferences to discuss progress in attaining the goals of the outcome document of the World Conference on Indigenous Peoples had been held periodically, with the participation of indigenous peoples.

115. Red COMUNCACOL emphasized the importance of empowering indigenous communities through training and awareness-raising. Asociación Kunas Unidos por Napguana highlighted the Kuna people's successful struggle to achieve autonomy and recognition.

M. Feedback on the role of the Expert Mechanism

116. The questionnaire posed the following question to States and indigenous peoples: "In light of paragraph 28 of the outcome document of the World Conference on Indigenous Peoples (General Assembly resolution 69/2), please provide feedback on how the Expert Mechanism can more effectively promote respect for the Declaration, and how it can better assist States to monitor, evaluate and improve the achievement of the ends of the Declaration."

117. In paragraph 28 of the outcome document of the World Conference on the Rights of Indigenous Peoples, the General Assembly invited the Human Rights Council, "taking into

account the views of indigenous peoples, to review the mandates of its existing mechanisms, in particular the Expert Mechanism on the Rights of Indigenous Peoples… with a view to modifying and improving the Expert Mechanism so that it can more effectively promote respect for the Declaration, including by better assisting Member States to monitor, evaluate and improve the achievement of the ends of the Declaration."

118. Australia noted that the Expert Mechanism could assist States by sharing examples of successful measures taken by other Member States. Paraguay suggested that the Expert Mechanism work with States to develop guidelines and performance indicators to guide and improve monitoring to achieve the aims of the Declaration. The suggestion for development of indicators was echoed by Guatemala. Guatemala also suggested that the Expert Mechanism conduct regional studies considering the particularities of the various regions, including political and cultural differences. Guatemala also suggested that the Expert Mechanism work with States to strengthen national institutions that were mandated to develop the rights of indigenous peoples. Peru echoed calls for developing standardized monitoring indicators and indicated that the Expert Mechanism could be a platform for exchanging information and best practices among States.

119. The Saami Parliament of Finland responded that the implementation of commitments under the Declaration should be monitored on a regular basis, adding that such monitoring should be State-specific and that indigenous peoples living in the State in question should be heard. The Saami Parliament of Finland also suggested that recommendations should be issued to States for more effective implementation of the Declaration.

120. Teemashane Community Development Trust suggested that the Expert Mechanism could assist States in aligning domestic legislation to the Declaration.

III. Concluding comments

121. **The Expert Mechanism on the Rights of Indigenous Peoples very much appreciates the responses of States and of indigenous peoples and indigenous peoples' organizations to its questionnaire. The responses received allow the Expert Mechanism to evaluate some of the advances and challenges in the implementation of the Declaration from the perspectives of both States and indigenous peoples. However, the Expert Mechanism regrets the relatively low number of responses received and the fact that many Sates with indigenous peoples did not submit any information on their laws, policies and practices related to the implementation of the Declaration.**

122. **The majority of responses received from States provide information at a very general level. While information was provided on laws, policies and programmes relating to indigenous peoples, there was almost no information indicating the effectiveness of the measures taken. Most States provided only positive answers to questions. Negative answers would also provide a greater understanding of the barriers faced by States when implementing the Declaration.**

123. **Although several States reported on sectoral initiatives to implement provisions of the Declaration in areas such as education, health and environmental policy, very few reported on strategies or national action plans for the full implementation of the Declaration. There was also a lack of information as to any plans to develop such strategies or action plans, despite the commitment made by the Member States in the outcome document of the World Conference on Indigenous Peoples. Given the interdependence and interrelatedness of the rights contained in the Declaration, its implementation requires comprehensive approaches and actions, as highlighted in the outcome document of the World Conference on Indigenous Peoples. Furthermore, in**

some cases the role that indigenous peoples and their own representative institutions played in developing these initiatives remains unclear.

124. The Expert Mechanism underscores that substantive equality may require treating indigenous peoples as distinct groups facing unique circumstances. Several States discussed their commitment to equality and the equal treatment of all citizens under domestic law. However, some responses pointed towards the fact that equality is sometimes interpreted as prohibiting specialized programmes aimed at achieving the goals of the Declaration. The Expert Mechanism notes that the framework provided in the Declaration implies a need for special measures for indigenous peoples to ensure that they can enjoy the same rights and freedoms as other citizens. Indeed, special measures are specifically identified in numerous provisions of the Declaration.

125. Several responses from States showed encouraging progress in terms of efforts to adopt national legislation relating to indigenous peoples' right to participate in decision-making. However, it was not always clear whether States were following the obligation to seek indigenous peoples' free, prior and informed consent. Instead, several States referred to "prior consultation". The Expert Mechanism encourages States to ensure that consultation processes work towards seeking indigenous peoples' free, prior and informed consent.

126. Some States expressed concern that the diversity of indigenous peoples, geographic dispersion, and the lack of a unified indigenous voice often make it difficult to develop policies. The Expert Mechanism notes that the Declaration recognizes and embraces the diversity of indigenous peoples. This diversity may lead to different needs and different voices expressed by indigenous peoples within the same State, which should be adequately addressed in order to aid the implementation of the Declaration.

127. In answering questions, some States highlighted general measures of non-discrimination, gender equality and the protection of specific vulnerable groups. While the Expert Mechanism commends States for undertaking these measures, it encourages them to continue to examine how to best address the situation of indigenous peoples and individuals facing discrimination on multiple grounds.

128. Responses from indigenous peoples provide examples of approaches and activities, including advocacy and awareness-raising, development of resources on the Declaration, training for indigenous communities and organizations, and translating the Declaration into indigenous languages. However, few of the indigenous peoples that responded proposed overarching strategies for implementation of the Declaration. This may partly be due to the fact that most of the indigenous respondents work at the local level and are generally limited by a lack of financial resources and, in some cases, by a lack of will from State institutions to cooperate and engage with indigenous peoples.

129. Most indigenous peoples' organizations reported a lack of attention from States in considering the Declaration and, more generally, the rights of indigenous peoples. These concerns hamper the effective implementation of the Declaration.